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HISTORY

OF THE

REPUBLIC

OF THE

UNITED STATES OF AMERICA,

AS TRACED IN THE WRITINGS OF

ALEXANDER HAMILTON

AND

OF HIS COTEMPORARIES.

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BY

JOHN C. HAMILTON.

T.T. a 9

VOLUME III.

"Neque enim est ulla res, in qua propius ad Deorum numen virtus accedat humana, quam civitates aut condere novas, aut conservare jam conditas."—*Cic. de Repub.*

SECOND EDITION.

PHILADELPHIA:
J. B. LIPPINCOTT & CO.
1864.

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NOTES TO VOL. III.

NOTE TO PAGE 28.

In part of a former work, there is an error. The person there mentioned, as being a member of the Legislature, was not so. The acts there referred to, were passed May 12, 1784. The City of New York was evacuated, November 25, 1783; and A. B. was elected in April, 1784, the regular annual election. The author of that work, was not then aware, as is stated in the text of the present work, that there was a special election in January, 1784, so soon after the evacuation of the city; but erroneously supposed, that the Legislature which passed these acts was that elected in April, 1784, of which A. B. was a member. Subsequent access to the Journal of the Legislature has enabled him to make the correction, which has been made.

NOTE TO PAGE 347.

On referring to the printed Journal, it will be seen that the amendment mentioned by Jefferson does not appear. The precision of this statement can leave no doubt, either that he personally derived it from the Journal, or from a person who had access to it. The Journal, as printed, was compiled by John Q. Adams, then Secretary of State, under a resolution of Congress of the 27th of March, 1818. It was, by the last act of the Federal Convention, deposited with General Washington, to be retained by him, subject to the order of Congress. On the 19th March, 1796, he deposited in the State Department all the papers of the Federal Convention in his charge, Mr. Pickering then being Secretary of State. He was succeeded by John Marshall, and Marshall by Madison.

Mr. Adams addressed Madison this letter:

"DEPARTMENT OF STATE, *Washington*, 22 *Oct.*, 1818.

"A resolution of Congress of 27 March last, directs the publication of the Journal of the Convention which formed the present Constitution of the United

States, now remaining in this office, and all acts and proceedings of the Convention which are in the possession of the United States.

"On the 19th March, 1796, there were deposited in this office, by President Washington, a volume in manuscript containing the Journal of the proceedings of the Convention; a second volume, containing their proceedings in committee of the whole; a third volume, containing lists of yeas and nays on various questions; and nine separate papers, two of which are copies of resolutions submitted by Mr. Randolph, and discussed in Convention; one is a printed *draft* of the Constitution as reported, with manuscript minutes of amendments to it, adopted after debate, and the rest are papers of little or no consequence.

"These are all the documents possessed by the government, coming within the scope of the resolution of Congress at their last session. General Bloomfield transmitted to me, in the month of May last, several papers relating to the proceedings of the Convention, which had come into his hands, as executor to Mr. Brearly, one of its members. Among them are copies of propositions offered on the 15th of June, 1787, by Mr. Patterson, and a plan of Constitution offered by Colonel Hamilton.

"Mr. Patterson's propositions are noticed in the Journal of the 15th of June, but I find throughout the Journal no mention made of the plan of Col. Hamilton. The Journal does mention a plan of Constitution offered by Mr. Charles Pinckney, which appeared to have been taken into consideration, but of which *there is no copy in possession of the government.*

"The volume containing the Journal of the Convention is *incomplete.* The second closes with the proceedings of Friday, 14th Sept., 1787. Those of Saturday, the 15th, and of Monday, the 17th, the day of final adjournment, are not entered in the book, which, if published in its present condition, will be *a fragment.* I have written to Major Jackson, the Secretary of the Convention, to inquire if he could furnish the means of supplying the deficiency. He answers that he cannot. The *chasm is remarkable,* as the adjournment on the 14th leaves a debate unfinished and to be resumed. There was *even* a *part* of the proceedings of Saturday, the 15th, which is *crossed out,* upon the book.

"Under these circumstances, the President has directed me to write to you and inquire, if you can, without inconvenience, furnish the means of completing the Journal by a *note* which may *indicate* the transactions of the Convention on the last two days of the session; and if you have any additional documents relating to the proceedings of the Convention, which you think might be useful to add to the publication directed by Congress, and which you would have the goodness to communicate for that purpose."

Reply of Madison.

"MONTPELIER, *Nov.* 2, 1818.

"SIR,—

"I have received your letter of the 22d ult., and enclose such extracts from my notes relating to the two last days of the Convention, as may fill the chasm in the Journal, according to the mode in which the proceedings are recorded.

"Col. Hamilton did not propose in the Convention any plan of Constitution. He had sketched an outline which he read as part of a speech, observing, that he did not mean it as a *proposition*, but only to give a more correct view of his ideas.

"Mr. Patterson regularly proposed a plan which was discussed and voted on. I do not find the plan of Charles Pinckney among my papers. I tender you, sir, assurances of my great respect and esteem."

J. Q. Adams to Madison.

"WASHINGTON, 1 *June*, 1819.

"DEAR SIR,—

"In a letter which I had the honor to receive from you last November, you observed, in relation to a plan of government offered by Col. Hamilton to the Federal Convention, 1787, that it was not formally presented as a plan to be debated, but read by him, in the course of a speech. Could you favor me so far as to inform me of the day upon which that speech was delivered, and the question or subject in debate which gave occasion to it? My motive for the inquiry is, that as it is to be published with the Journal of the Convention, it seems proper that it should be printed with reference to the time and occasion upon which it was presented."

J. Q. Adams to Madison.

"WASHINGTON, 18 *June*, 1819.

"It appears by the Journal that on the 12th of Sept. a *revised* draught of the plan of the Convention was brought in by a Committee of Revision, consisting of five members. It was printed and copies of it were distributed to the members on the 13th. It was then taken up, collated with the previous draught, and the proceedings of the Convention upon it, *corrected* and *amended*. This is the only entry concerning it made on the Journal, but from the list of yeas and nays, of which I now take the liberty to enclose to you, it is *apparent that many very important amendments* were *proposed*, some of which were adopted, and others rejected, upon questions taken by ayes and nays in the process of preparing the revised draught for signature.

"The enclosed list is an exact copy of that in the Department, referring to the period of the proceedings of the Convention. Some of the questions are

entered on the list, but many others are omitted, the ayes and nays appearing to have been taken, but the *question upon which being left in blank.* By recurrence to the alterations of the *revised draught*, I have been able to ascertain some of them, but of *many rejected propositions* I have no clue that would enable me to trace the questions.

"The favor I have to ask you is, as far as your minutes or documents or *recollections* may enable you, to fill up the blanks of the *questions* in the enclosed list. I received your favor in answer to my question concerning Colonel Hamilton's plan, for which I pray you to accept my thanks, and add at the same time the renewed tender of my perfect respect and attachment."

J. Q. Adams to Madison.

"WASHINGTON, 21 *June*, 1820.

"I have had the pleasure of receiving your letter of the 18th instant. The *error* in the printed Journal of the Convention by which the motion on the 7th Sept. for the establishment of a Council of State is ascribed to you, is in the *original* list of ayes and noes, *taken at the time by the Secretary, who probably* in the hurry of writing made the *mistake* which you suggest of your name instead of that of Mr. Mason.*

"I am apprehensive that upon examination of the volume you will find *many* other errors and inaccuracies, some of which may be traceable to the same source as this, and the others to the imperfections of all the assiduity with which it was my intention to exhibit all the evidence that did exist at this Department of the proceedings of the Convention. If without intruding too much on your leisure, I could take the liberty of requesting, that you would take the trouble to examine the volume throughout, and to minute all the passages which your recollection or your notes would detect are errors, it would confer a new and valuable obligation upon . . . and might enable to correct hereafter the *misapprehensions* which may have crept into the compilation from the manner in which the materials for it were necessarily collected and arranged."

* Journal, p. 340, Sept. 7, 1787.—"It was moved by Mr. Madison, and seconded, to postpone the consideration of the fourth section of the report, in order to take up the following:

"'That it be an instruction to the Committee of the States to prepare a clause or clauses for establishing an *Executive Council*, or a Council of State, for the President of the United States, to consist of six members, two of which from the Eastern, two from the Middle, and two from the Southern States, with a rotation and duration of office, similar to that of the Senate; such Council to be appointed by the Legislature or by the Senate.'"

Yeas—Maryland, South Carolina, Georgia. Nays—Eight States.

THE HISTORY

OF THE

REPUBLIC OF THE UNITED STATES.

CHAPTER XXXVII.

France was all joyous at the restoration of peace. The burthens of the conflict were weighing heavily upon her impoverished treasury. Enough of glory had been gained. The nation's pulse was beating weakly. Prince and People were alike weary of the war, for England, though maimed for a time, was not "overthrown."

Enthusiastic pomp and festival proclaimed the conclusion of the comprehensive treaties of compensation.

A day of celebration being appointed, "the king-at-arms and six heralds-at-arms, all attired in a garb not unlike that of the knave of diamonds, sallied forth on horseback, through the streets of Paris, preceded by the band of the king's stables, and by the Master of Ceremonies. The procession went first to take (by the special direction of the king) the Mayor of Paris, the City authorities, and the Judges of the Châtelet, whose chief had previously delivered to the king-at-arms the ordinance of peace, which was to be proclaimed.

"All these corporations, formed in a body, repaired in succession to fourteen public squares, where the reading of the royal document took place, attended each time with these formalities.

"The Chevalier de la Haye, after having ordered three peals from his Majesty's bells-at-arms, thrice exclaimed, "In the name of the king," then added, "First herald-at-arms of France, by the title of Burgundy, attend to the performance of the duties of your office." The official, thus bidden, received the ordinance from the hands of his chief, and read it aloud. The king-at-arms, after the conclusion of the reading, ordered three flourishes from the royal trumpeters; and then cried out three times, "Long live the king." About the middle of his stately march, the king-at-arms and his heralds, in conformity with a custom as ancient as it is peculiar, entered the convent of the Feuillants, whose monks had prepared a collation for those officials. The rest of the procession, being by the laws of etiquette excluded from the privilege of the feast, waited in the streets the return of the guests of the convent. The ceremony was concluded with a sumptuous supper at the City Hall, where every inhabitant of Paris was a welcome guest.

"During this official promenade, the Peace was announced from the stage of the opera to a delighted audience."*

While France was thus jubilant, the British Parliament spoke the discontents of the people. By the opposition, the terms of the treaty were loudly condemned; and even its most powerful advocate, William Pitt, held language wounding to the pride of the nation. "To accept the treaty or to continue the war," he declared, "was the only alternative in the power of ministers. Such was the ulti-

* Oeil de Bœuf, ii. 291.

matum of France. There was a time when we could have dictated to the proudest of our enemies. But that era is past; and the summit of glory, of which we could once vaunt, is now but a vision and a memory. At the same time, let it be remembered, that the peace obtained is better than was suited to the lowness of our condition. We have acknowledged the American independence. But what is that but an empty form? The incapacity of the minister who conducted the war, and a series of unprosperous events, had produced the acknowledgment."

After a long and earnest struggle, the public dissatisfaction prevailed, and the ministry were compelled to retire.

Though England had been worsted in her contest with the United States, that contest was not to her without its benefits. The public opinion of the nation had been fostered into strength, and those great meetings, which have resulted in successive reforms of the House of Commons, owed their birth to the American revolution. With a wise characteristic caution, the doors of liberty have been opened without imperilling the State.

Early in the year eighty-two, the counties, cities, and towns of England were seen in motion; and on the first of February, the livery of London resolved, "that the unequal representation of the people, the corrupt state of parliament, and the perversion thereof from its original institution, had been the principal causes of the unjust war with America, of the consequent dismemberment of the British empire, and of every grievance of which the nation complained. That these grievances could never be removed, until the right of the people to their constitutional share in the English government should be re-established, by a fair and equal representation in parliament, and a frequent election of their representatives, according to ancient usuage."

Thus sustained by these manifestations of feeling, William Pitt led the way in a motion for reform, which succeeding parliaments have introduced.

A rumor that the definitive treaty had been received, prompted a request that Hamilton would remain in Congress a few days. The apprehensions entertained by him of obstacles to its conclusion being thus dispelled, he was much elated at the event, and with the prospect, after so long a public service, of enjoying the repose of private life.

"I am strongly urged," he wrote to his wife, "to stay a few days for the ratification of the treaty; at all events, however, I will not be long from you. I give you joy of the happy conclusion of this important work, in which your country has been engaged. Now, in a very short time, I hope we shall be happily settled in New York. My love to your father. Kiss my boy a thousand times. A thousand loves to yourself."

He soon after proceeded to Albany. The instability of the public counsels, and the impotence of the confederacy, caused Hamilton to fear that either foreign aggression or civil discord might again compel a resort to arms. Thus impressed, he wrote to Washington on the thirtieth of September:

"I think I may address the subject of this letter to your Excellency with more propriety than to any other person, as it is purely of a military nature; as you are best acquainted with my services as an officer, and as you are now engaged in assisting to form the arrangements for the future peace establishment.

"Your Excellency knows, that in March '82, I relinquished all claim to any compensation for my services, either during the residue of the war, or after its conclusion—simply retaining my rank. On this foundation I build a hope that I may be permitted to preserve my rank

on the peace establishment, without emoluments, and unattached to any corps, as an honorary reward for the time I have devoted to the public. As I may hereafter travel, I may find it an agreeable circumstance to appear in the character I have supported in the revolution.

"I rest my claim solely on the sacrifice I have made; because I have no reason to believe that my services have appeared of any value to Congress, as they declined giving them any marks of their notice on an occasion which appeared to my friends to entitle me to it, as well by the common practice of sovereigns, as by the particular practice of this country in repeated instances.

"Your Excellency will recollect, that it was my lot at Yorktown to command, as senior officer, a successful attack upon one of the enemy's redoubts; that the officer who acted in a similar capacity in another attack, made at the same time by the French troops, has been handsomely distinguished by the government to which he belongs; and that there are several examples among us, where Congress have bestowed honors upon actions, perhaps not more useful, nor, apparently more hazardous.

"These observations are inapplicable to the present Congress, further than as they may possibly furnish an additional motive to a compliance with my wish.

"The only thing I ask of your Excellency, is, that my application may come into view in the course of the consultations on the peace establishment."

Hamilton had been too prominent in his opposition to the cabal against the Commander-in-chief, to be forgiven by its partisans in Congress. Hence the injustice done him. Consecrated in the public affections, Washington could not be directly attacked by his enemies. It was at Hamilton, as a buckler, the incessant blows were struck.

The Commander-in-chief replied on the sixth of November.

"Congress, after resolving to adjourn upon the twelfth of this month, did, equally unexpectedly and surprisingly to me, finish their session at this place the day before yesterday; without bringing the peace establishment, or any of the many other pressing matters, to a decision.

"Finding that this was likely to be the case, I showed your letter to some of your particular friends; and consulted with them on the propriety of making known your wishes with my testimonial of your services to Congress; but they advised me to decline it, under a full persuasion that no discrimination would, or indeed could, be made at this late hour, as every other officer from the highest to the lowest grade (not in actual command) were retiring without the retention of rank; and that the remainder, upon a peace establishment (if a continental one should ever take place), would come in upon the new system, under fresh appointments; so that unless you wished to come into actual command again (which none supposed), they saw no way by which you could preserve your rank.

"I have the pleasure to inclose you a brevet, giving you the rank of full colonel."

Hamilton was now looking to the evacuation of New York. What a tide of thoughts must have passed through his mind as he now sailed the tranquil Hudson, on whose margin he passed many of his happiest after hours, and breathed his latest sigh! How changed his present from his former feelings, when hastening along its alarmed borders on his lonely, anxious way—amid deserted dwellings, forsaken fields, a discordant population—to extort reluctant aid from Gates, he detected those incipient intrigues which would have lost Washington to his country!

Where, before, the timid shallop rarely ventured to dart

its course across the mournful stream, was now seen the bold canvass of its unrivalled craft wafting to their liberated mart its joyous fugitives; each point and inlet, as he passed, reviving some incident of his own eventful career, or of his country's glorious history.

Poughkeepsie would recall the moment, when, in concert with Schuyler, were framed those memorable resolutions, the first to recommend a general convention to establish a constitution. Approaching Fishkill, he would recur to the time when, with early wisdom, he portrayed the evils of a weak and the blessings of an efficient government. As his eye turned upon the heights of Newburgh, now gleaming in the morning sun, he would behold, as it were again, the dark cloud which hung threatening over his companions in arms, ready to burst and overwhelm them, until dissipated by his powerful interposition. West Point, crowned with autumnal gloom, spoke of the weary hours of anxious consultation with his chief, the marked victim of a deep laid treason. The detection, the pursuit, the escape of Arnold, were all before him. Beyond, the scene of André's fate, immortalized by the touching narrative which would have veiled his error with his misfortunes. The humble ferry-house at Greensburgh would awaken happier associations, where, retiring in the pride of a manly temper from the family of Washington, he devoted his first leisure to those capacious plans of national polity which placed him in early manhood among the foremost sages of the revolution. And now, New-York opened before him in all the often recollected magnificence of its capacious bay, its world-inviting waters, its peaceful shores, its guardian isles, whence proudly rose against the evening sky, the flag of the Union, announcing that the conflict was over, and seeming to invite him to new triumphs in this much-loved scene of his youthful imaginings, efforts, and distinctions. Cordial were the greetings of this grateful city, as it welcomed, in its

once stranger boy, the now powerful advocate of mercy to its apprehensive denizens, hastening to shield them from persecution for the venial offence of mistaken loyalty.

The impression which his congressional career had produced, is shown in the letters received by him at this time. McHenry, who had recently taken a seat in congress, writes:—

Princeton, Oct. 22, 1783.

DEAR HAMILTON,

The homilies you delivered in congress, are still recollected with pleasure. The impressions they made, are in favour of your integrity, and no one but believes you a man of honour and republican principles. Were you ten years older, and twenty thousand pounds richer, there is no doubt but that you might obtain the suffrages of congress for the highest office in their gift. You are supposed to possess various knowledge, useful, substantial, and ornamental. Your very grave, and your cautious—your men who measure others by the standard of their own creeping politics, think you sometimes intemperate, but seldom visionary, and that were you to pursue your object with as much cold perseverance as you do with ardour and argument, you would become irresistible.

In a word, if you could submit to spend a whole life in dissecting a fly, you would be, in their opinion, one of the greatest men in the world. Bold designs—measures calculated for their rapid execution—a wisdom that would convince, from its own weight—a project that would surprise the people into greater happiness, without giving them an opportunity to view it and reject it—are not adapted to a council composed of discordant materials, or to a people which have thirteen heads, each of which pays superstitious adorations to inferior divinities.

I have reported on Fleury's case on the principle you recommend. I fear his half-pay will not be granted.

Adieu, my dear friend, and in the days of your happiness drop a line to your

McHenry.

P. S.—Our exemplification of the treaty has passed, and will be transmitted to the state officially.

The other was from Jay, at Passy:—

"DEAR SIR,

"You was always of the number of those I esteemed, and your correspondence would be both interesting and agreeable. I had heard of your marriage, and it gave me pleasure, as well because it added to your happiness, as because it tended to fix your residence in a state of which I long wished you to be and remain a citizen.

"The character and talents of delegates to congress daily become more and more important, and I regret your declining that appointment at this interesting period. Respect, however, is due to the considerations which influence you; but as they do not oppose your accepting a place in the legislature, I hope the state will still continue to derive advantage from your services: much remains to be done, and labourers do not abound.

"I am happy to hear that the terms of peace and the conduct of your negotiators give general satisfaction. But there are some of our countrymen, it seems, who are not content, and that too with an article which I thought to be very unexceptionable, viz: the one ascertaining our boundaries. Perhaps those gentlemen are latitudinarians.

"The American newspapers for some months past contain advices which do us harm; violences and associations against the tories pay an ill compliment to government, and impeach our good faith in the opinion of some, and our magnanimity in the opinion of many. Our reputa-

tion, also, suffers from the apparent reluctance to taxes, and the ease with which we incur debts without providing for their payment. The complaints of the army,—the jealousies respecting congress—the circumstances which induced their leaving Philadelphia—and the too little appearance of national spirit pervading, uniting, and invigorating the confederacy, are considered as omens which portend the diminution of our respectability, power, and felicity. I hope that as the wheel turns round, other and better indications will soon appear. I am persuaded that America possesses too much wisdom and virtue to permit her brilliant prospects to fade away for want of either.

"The tories are almost as much pitied in these countries as they are execrated in ours; an undue degree of severity towards them would, therefore, be impolitic, as it would be unjustifiable. They who incline to involve that whole class of men in indiscriminate punishment and ruin, certainly carry the matter too far. It would be an instance of unnecessary rigour and unmanly revenge, without a parallel, except in the annals of religious rage in times of bigotry and blindness. What does it signify where nine-tenths of these people are buried? Victory and peace should in my opinion be followed by clemency, moderation, and benevolence, and we should be careful not to sully the glory of the revolution by licentiousness and cruelty. These are my sentiments, and however unpopular they may be, I have not the least desire to conceal or disguise them. Believe me to be, with great regard and esteem."

Notwithstanding urgent solicitations, Hamilton adhered to his purpose of retiring wholly from public life, and was soon engaged in the labours of his profession; in which, without the advantages of much previous study, by the energies of a mind peculiarly adapted to the analysis of first

principles, he rose to an unequalled, unapproached distinction.

His letter to McHenry was written to obtain an exemplification of the treaty. The state of New-York was ruled at this time by cruel counsels. Taking advantage of the doubt as to the period of its execution, it passed laws in direct violation of this treaty, and, in despite of the most earnest intercessions, refused to stay the prosecutions commenced against proscribed persons. Shocked at these proceedings, Hamilton took up the cause of these persecuted individuals with all the zeal of his fervent nature.

The definitive treaty having arrived, he addressed a memorial to congress asking a record of it; in which, to prompt its immediate ratification, he stated that there appeared to be no probability that the legislature will interpose its authority to stay the prosecutions until it is announced; a measure that would "conduce to the security of a great number of individuals who derive their hopes of safety from the national faith."

Hamilton now commenced his professional career; and it is one of the most interesting incidents of that career, that the first exertion of his talents as an advocate, was in the cause of clemency and good faith. It was in the inmost privacy of his quiet hours, reflecting on such exertions, that he exclaimed, "The Almighty has given me a good head, and thank God, he has also given me a good heart."

This was a suit in the mayor's court of the city of New-York, to recover the rents of property held by the defendant under an order of Sir Henry Clinton, and was founded on a recent enactment called "The Trespass Act." This act authorized an action of trespass in favour of persons who had left their abodes in consequence of the invasion of the enemy, against those who had been in pos-

session of them during the war, and expressly precluded a justification of this occupancy by virtue of a military order. It was contended that the case was not within the statute; that the laws of nations controlled it and barred the suit, and that the treaty included an amnesty, which extinguished the statute right.

No precedent, it is believed, exists for such an act of legislation; an act providing that after a war solemnly terminated by a treaty duly executed, suits could be commenced by the subjects of one belligerent against those of another for injuries committed during the war by military order.

No case could have arisen of greater interest, higher moment, or larger considerations. It was a question of national faith and national character—it was a question between the subjects of two independent nations, relating to transactions in a war between those nations.

It involved a determination of the powers of the confederacy, and of its constitutional supremacy over a law of a member of that confederacy. It was of the most grave and weighty magnitude, for it would decide whether a state tribunal would recognise the laws of nations and of the confederation as the rule of its decisions when in conflict with a local statute. It might determine the conduct of Great Britain as to the execution of the treaty, the surrender of the posts, and the peace of the union.

It involved property of a great amount, and numerous cases depending on the same principle. It was the decision of a controversy between a wealthy merchant—a British subject, an adherent of the enemy—and a fugitive, an exile, a poor American widow, impoverished by the war. It was tried while the strife of the fierce contest was recent, in the midst of a dilapidated and yet disordered city, when all around were beheld the ravages of the invader, in a hall of justice desecrated and marred by

the excesses of its late occupants, a licentious soldiery. On one side was the attorney-general of the state, armed with all its authority to sustain its laws, representing the passions of an inflamed community, pleading for the widowed exile. On the other stood Hamilton, resting on the justice of this mighty cause.

The plaintiff's task was obvious. It was to insist upon the statute. The statute was explicit. Both the parties were within its provisions. It was obligatory, and no court of that state, no court especially of limited jurisdiction, could look beyond it. Look where? To the laws of nations,—laws having no settled foundation, undergoing constant change, affording no certain rule, and which ought to have no influence on the government of this state or upon the people. The war was unjust, admitted by the enemy to be unjust. By an unjust war, the unjust party acquires no rights, for no rights can be derived from an injury. It was not a solemn war, and therefore conferred no rights upon the captor. Nor was that court to be controlled by the treaty. New-York was a sovereign, independent state. Congress had no right to bind the state in this matter; it was interfering with its internal police. Can they by treaty give away the rights of its citizens? A case like this had never before been heard of. It was without a precedent, and stood upon the statute.

Hamilton felt the advantageous position of his opponent. He passed by the immediate parties to the suit, and spoke to the question. In a brilliant exordium,* he dilated on its importance in all its various aspects; declared that the decision might affect all the relations of two great empires, might be discussed in Europe, and might produce,

* The outline of this speech is framed from an extended brief, giving all the points of the argument and the authorities.

according to the issue, a good or bad impression of our country. It would establish precedents that might give a complexion to future decisions, would remain a record of the spirit of our courts, and would be handed down to posterity as indicating the character of our jurisprudence. It was a question of a most comprehensive nature; its merits include all the principles which govern the intercourse between nations. Heretofore our courts have seemed to consider themselves in an inferior light; their decisions must hereafter form precedents.

Having thus appealed to the pride of the court, he proceeded:—"We are told there is no precedent. Then, indeed, it is a new case, and a new case must be determined by the law of nature and the public good. Where the law is silent, the judge speaks; and the most ancient authority states that in England cases were adjudged according to equity, before the customs of the realm were written and made certain. This question must be decided by the laws of nations. But what, it is asked, are the laws of nations? Where are they to be found?—They are the deductions of reason, to be collected from the principles laid down by writers on the subject and established by the authorized practice of nations, and are a part of the law of the land. The laws of nations and the laws of war are part of the common law."

He then stated the two great divisions of the laws of nations. The natural, necessary, or internal, universally binding on the conscience of nations; but in its external obligations, controlled by the positive or voluntary law for the good of mankind, which is equally obligatory, and is enjoined by the natural law.

By the necessary law, the party making an unjust war acquires no rights, and is bound to make reparation for all damages. By the voluntary law—which may be defined, that system of rules which grow out of the independence

of distinct political associations, qualifying their natural rights as individuals—both parties have equal rights, having no common judge; and the effects of a war on both sides, are the same.

These effects are principally impunity, the acquisition of property; a rule established to promote the general peace of mankind, by removing discussions about the justice of the war, and the proportion of the damages to the injury and the security of purchasers, especially neutrals.

But it is objected, this was not a solemn war. The approved practice of nations is against this objection. But it was a solemn war. Formalities are arbitrary—an act of parliament authorized hostilities. The declaration of independence speaks of an open war subsisting. Congress formally authorized our citizens to cruise. It has been said that the state of New-York has no common law of nations. The answer is, *that law* results from the relations of universal society—that our constitution admits the common law, of which the law of nations is a part—and that the United States direct our foreign intercourse, and have expressly become parties to the law of nations. What are the effects of a war? The general proposition is, that movable goods belong to the captor forever, as soon as the battle is over; the fruits of immovables, while they are in possession. Other rules have been laid down with respect to movables; but the true rule is, the battle being over. The ancient precedents of pleading are not that the prize remained a night with the enemy, but that it was gained by battle of the enemy; and pleading is the touchstone of the law. The common law carries the rights of war so far as to give property in a prisoner, and an action of trespass for taking him away. Hence, we see the common law not only adopts the law of nations in its full extent as a general doctrine, but particular adjudications recognise the operation of capture.

The second branch of the discussion related to the effect of the treaty of peace, and tended to show that this action could not be maintained without a violation of the treaty; every treaty of peace including an amnesty, which is of its very essence, between private persons as well as the contending publics. To the objection, that congress had no right to bind the state, that it was meddling with its internal police, he replied, that on that construction, "the confederation was the shadow of a shade;" but that congress had an unquestionable right; that "the sovereignty and independence of the people began by a federal act; that our external sovereignty is only known in the union—that foreign nations only recognise it in the union; that the declaration of independence was the fundamental constitution of every state, all of which was acceded to by the convention of New-York, which does not pretend to authenticate the act, but only to give their approbation to it:" that hence it followed, "that congress had complete sovereignty; that the union was known and legalized in the constitution of New-York previous to the confederation, and that the first act of the state government adopted it as a fundamental law; from which reflections," he says, "we are taught to respect the sovereignty of the union, and to consider its constitutional powers as not controllable by any state."

The confederation is an abridgment of those powers; but, mutilating as it is, it leaves congress the full and exclusive powers of war, peace, and treaty. The power of making peace, is the power of determining its conditions. It is a rule of reason and law, that to whomsoever any thing is granted, that also is granted without which it cannot exist. If congress have not a power to adjust an equivalent for damages sustained, and remit the rest, they have no power to make peace. It is true that this power

does not permit the making all possible conditions,—such as dismembering the empire, or surrendering the liberties of the people; but it includes the power of making all reasonable and usual conditions—such is a remission of damages,—for without it the state of war continues.

But it may be asked, how can congress, by treaty, give away the rights of citizens of New-York? To this I answer—First, that the citizens of New-York gave them power to do it for their own safety—Secondly, that the power results from this principle of all governments: that the property of all the individuals of a state is the property of the state itself, in regard to other nations. Hence, an injury from the government gives a right to take away, in war, the property of its innocent subjects. Hence, also, the claim of damages for injuries done is in the public, who may agree for an equivalent, or release the claim without it; and, our external sovereignty existing in the union, the property of all the citizens, in regard to foreign states, belongs to the United States, as a consequence of what is called the eminent domain. Hence, to make the defendant answerable, would be a breach of the treaty of peace. It would be a breach, also, of the confederation. Congress have the exclusive right of war and peace. Congress have made a treaty of peace, pursuant to their power; a breach of the treaty is a violation of their constitutional authority, and a breach of the confederation. The power of congress in making treaties, is of a legislative kind: their proclamation enjoining the observance of it is a law, and a law paramount to that of any particular state. But it is said, "the sovereign authority may, for *reasons of state*, violate its treaties, and the laws in violation of them bind its own subjects. This allegation goes on bold ground, that the legislature intended to violate the treaty. But I aver that in our constitution it is not true that the sover-

eignty of any one state has legally this power. Each state has delegated all power of this kind to congress. They are equally to judge of the necessity of breaking, as of the propriety of making, treaties."

"The legislature of any one state has nothing to do with what are called 'reasons of state.' We might as well say a particular county has a right to alter the laws of the state, as a particular state the laws of the confederation. It has been said, and it may be said again, that the legislature may alter the laws of nations. But this is not true in theory, nor is it constitutional in our government; for congress have the exclusive direction of our foreign affairs, and of all matters relating to the law of nations. No single state has any legal jurisdiction to alter them.

"It may again be said, that the accession to the confederation was an act of our legislature. Why may not another act alter or dissolve it? I answer, it is not true; for the union is known in our constitution as pre-existing. The act of confederation is a modification and abridgment of federal authority by the original compact.

"But if this were not the case, the reasoning would not apply. For this government, in acceding to the confederation, is to be considered, not as a sovereign *enacting a law*, but as a party to a contract; as a member of a more extensive community agreeing to a constitution of government. It is absurd to say, one of the parties to a contract may, at pleasure, alter it without the consent of the others. It will not be denied that a part of an empire may, in certain cases, dismember itself from the rest. But this supposes a dissolution of the original compact. While the confederation exists, a law of a particular state derogating from its constitutional authority *is no law*. But how, you ask, are the judges to decide? they are servants of the state. I answer, the confederation vesting no judicial

powers in congress, excepting in prize causes, in all other matters the judges of each state must of necessity be judges of the United States, and they must take notice of the law of congress as a part of the law of the land. For it must be conceded, that the legislature of one state cannot repeal a law of the United States.

"What is to be done in such a case? It is a rule of law, that when there are two laws, one not repealing the other, expressly or virtually, the judges must construe them so as to make them stand together. That golden rule of the Roman orator may be applied: 'Primum igitur leges oportet contendere considerando utra lex ad majores, hoc est ad utiliores, ad honestiores ac magis necessarias res pertinent. Ex quo conficiscitur utsi leges duæ aut si plures aut quotcunque erunt conservari non possint quia discrepent inter se, ea maxime conservanda putetur quæ ad maximas res pertinere videntur'—'Where two or more laws clash, that which relates to the most important concerns ought to prevail.'

"Many of these arguments are on the supposition, that the trespass act cannot stand with the laws of nations and the treaty. It may, however, legally receive such a construction as will stand with all; and to give it this construction is precisely the duty of the court. We have seen that to make the defendant liable, would be to violate the laws of nations, and forfeit our character as a civilized people; to violate a solemn treaty of peace, and revive the state of hostility; to infringe the confederation of the United States, and to endanger the peace of the whole. Can we suppose all this to have been intended by the legislature? The answer is, 'the law cannot suppose it: if it were intended, the act is void.'"

He then proceeded to state rules for the construction of statutes, which rendered this extremity unnecessary, quo-

ting the observation of Cato, "Leges enim ipsæ cupiunt ut jure regantur."

The argument extended to an examination of the jurisdiction of the court, and to a minute investigation of the distinctions to be taken between citizens and British subjects, claiming the protection of the law of nations. It closed with a strong exposure of the criminality of the procedure, and with a vehement exhortation to preserve the confederation and the national faith; quoting the beautiful apothegm of Seneca, "Fides sanctificissimum humani pectoris bonum est."

Amidst all the refinements which have been resorted to in order to impair the powers of the constitution, and to construe it as a compact of states, revocable at the will of either of the contracting parties, it is deeply interesting to advert to this early exposition of the true principles of the American union.—An union formed indeed by compact, but by a compact between the people of these colonies with every individual colonist before the existence of states; recognised by the people of each state, in their state constitutions; confirmed by them as states, in the articles of confederation; and subsequently "perfected" in a constitution ordained and established by the people "for the United States of America."

The result of this argument was a triumph of right over usurpation. The decision indicates the difficulties with which the defendant contended; but the force of the treaty to overrule the inhibition against pleading a military order, was admitted. The court also declared—"Our union, as has been properly observed, is known, and legalized in our constitution, and adopted as a fundamental law in the first act of our legislature. The federal compact hath vested congress with full and exclusive powers

to make peace and war. This treaty they have made and ratified, and rendered its obligation perpetual; and we are clearly of opinion, that no state in this union can alter or abridge, in a single point, the federal articles or the treaty."

This decision is the more meritorious, because made by judges holding by a temporary tenure, soon after the session of a legislature which had shown a fixed purpose to persevere in their odious and impolitic violence.

A few days after this judgment was rendered, a large public meeting was convened,* and an address to the people of the state was passed. This address,† after remarking on "the immense ability and learning" of the argument, exhorted the people, in their choice of senators, to elect men who would spurn any proposition that had a tendency to curtail the privileges of the people, and who would protect them from judicial tyranny. "Having confined themselves," it stated, "to constitutional measures, and disapproving all others, they were free in sounding the alarm. If their independence was worth contending for against a powerful and enraged monarch, and at the expense of the best blood of America, surely its preservation was worth contending for against those among ourselves who might impiously hope to build their greatness upon the ruins of that fabric which was so dearly established."

The legislature assembled soon after this meeting. Without waiting the result of an appeal, which the constitution secured, this decision, made in due form of law, and with unimpeached fairness, was brought before the assembly. Resolutions were passed, declaring it to be subversive

* Sept. 13th, 1784.

† It is related to have been from the pen of Melancton Smith.

of all law and good order, and the Council of Appointment were recommended, at their next session, "to appoint such persons Mayor and Recorder of New York, as will govern themselves by the known law of the land."

Judgments of courts ought to be the voice of the reason, of the virtue, of the justice of communities; and when such, they are the great landmarks and bulwarks of nations, rising far above the drifts and surges of temporary popular feeling. Such this was. And it was the first lofty stand taken in this country to carry into effect the policy Hamilton had recently reported to Congress, urging "that spirit of moderation and liberality which ought ever to characterize the deliberations and measures of a free and enlightened nation," in support of which, as has been stated, he stood alone.*

* This homage is paid him by a personal enemy. "The New York delegate, Colonel Hamilton, one of the Committee, distinguished himself by his firmness and consistency in giving it his *single negative*"—the motion to commit, instead of adopting and publishing the report.—*Gordon's* "*American Revolution*," iii. 376—22 to 1 negative.

CHAPTER XXXVIII.

The ability displayed by Hamilton on this occasion, his liberal views and distinguished probity, gathered around him the enthusiastic confidence and affection of the better part of his fellow-citizens; and at a time when the judicial character of the State was to be formed, and, from the disturbed situation of the community, professional trusts were of the most important and extensive influence, he was foremost in endeavouring to secure to the laws an honest and enlightened administration.

This was not an easy task. The general relaxation of morals, an usual and most lamentable concomitant of war, was attended with a prevailing disregard of, and disposition to question, the decisions of the courts. In the political speculations to which the revolution had given rise, the sovereignty of the popular will, which was recognised as the basis of every proceeding, was pushed to the utmost extremes in its application; and wherever the operations

of the laws bore hard, in the then unsettled relations of society, to recur to the elementary principles of government, and resolve every rule by its apparent adaptation to individual convenience, was the prevailing tendency of public opinion. The course of the contest, the means by which it had been conducted, the extravagant schemes it had engendered, gave every citizen a strong personal interest in its results, and, long before its termination, had divided the population into the opposite and hostile classes of debtors and creditors; each of which being compelled to unite, either for the common purpose of delaying or enforcing justice, acquired the dangerous, disorganizing, and formidable character of an intestine party.

The laxity of the national faith, as it sprung from, also confirmed this distinction. The loose opinions which had gradually led on to an unjust discrimination between the public creditors of different descriptions, soon took possession of the popular mind, induced preferences equally unjust in private affairs, and ultimately prostrated all respect for the obligations of contracts, and for the tribunals by which they were to be expounded and enforced. This lawless spirit which pervaded the country, was principally shown in questions growing out of the claims of two classes of creditors, whose situation, though totally different, it was sought to confound,—those of British merchants, for debts incurred previous to the revolution, and the claims of the tories, either for money due to them, or for lands of which possession had been taken as enemies' property.

The animosity natural to the combatants in a civil conflict; the enormities committed by the refugees, when the scale of war seemed to incline in their favour, or where they could continue their molestations with impunity; the harassing inroads and depredations which they had made

on private property, and on the persons of non-combatants, and the harsh and cruel councils of which they were too often the authors, appeared to the people at large to sanction every species of retaliation, and to place the tories beyond the pale of humanity.

This was merely the popular feeling. The governments of the United States, and of the individual states, with few exceptions, resisted these attempts, and sought to instil a spirit of moderation and forbearance, becoming the victorious party. In the progress of the conflict, and particularly in its earliest periods, attainder and confiscation had been resorted to generally, throughout the continent, as a means of war. But it is a fact important to the history of the revolting colonies, that the acts prescribing penalties, usually offered to the persons against whom they were directed the option of avoiding them, by acknowledging their allegiance to the existing governments.

It was a preventive, not a vindictive policy. In the same humane spirit, as the contest approached its close, and the necessity of these severities diminished, many of the states passed laws offering pardons to those who had been disfranchised, and restoring them to the enjoyment of their property; with such restrictions only as were necessary for the protection of their own citizens. In others, different councils unfortunately prevailed. In New-Jersey, meetings were held urging a non-compliance with the treaty, in consequence of the non-fulfilment by England of the seventh article, stipulating the return of the negroes and the restoration of the posts.

In Virginia,* the house of delegates resolved,† "That

* Almon's Remembrancer, p. 92, v. 10, 2d part.

† December 17th, 1782.

confiscation laws, being founded on legal principles, were strongly dictated by that principle of common justice which demands that if virtuous citizens, in defence of their natural rights, risk their life, liberty, and property on their success; vicious citizens, who side with tyranny and oppression, or cloak themselves under the mask of neutrality, should at least hazard their property, and not enjoy the labours and dangers of those whose destruction they wished. And it was unanimously declared, that all demands and requests of the British court for the restitution of property confiscated by this state, being neither supported by law, equity, or policy, are wholly inadmissible; and that our delegates be instructed to move congress that they may direct their delegates, who shall represent these states in a general congress for adjusting a peace or truce, neither to agree to any such restitution, nor submit that the laws made by any independent state of this union, be subject to the adjudication of any power or powers on earth."

A proclamation was subsequently issued by its governor, enjoining all those who had adhered to the enemy since the nineteenth April, seventeen hundred and seventy-five, or had been expelled by an act of the legislature, or who had borne arms against the commonwealth, to leave the state. And an address from the county of Caroline was presented to the legislature, stating, "they see the impolicy, injustice, and oppression of paying British debts!"

In Massachusetts, a committee of the legislature of which Samuel Adams was chairman, reported that no person who had borne arms against the United States, or lent money to the enemy to carry on the war, should *ever* be permitted to return to the state.* Resolutions of an in-

* Report on the files of the general court of Massachusetts, March 16th, 1784.

temperate character were also brought forward at public meetings in Maryland; and a bill containing many objectionable features was introduced in the popular branch of its legislature, but it was resisted with great eloquence, admirable sense, and unyielding firmness in the senate by two respected individuals, Charles Carroll and Robert Goldsborough, and was essentially modified.

In New-York, the division of public sentiment at the opening of the revolution being very great, each party viewed the other with the most jealous eyes, and felt more seriously the importance of individual exertions. The first act of hostility invited retaliation. Instead of looking to general results, the people of that state were driven to desperation by their continued uncertainty and alarm from dangers which menaced their double frontier.

The laws which were passed for their protection, for the apprehension of persons of "equivocal character," early in the warfare, were soon followed by the establishment of a board of commissioners of sequestration. An institution which, though at first confided to safe hands, was unavoidably entrusted with powers that naturally led to abuse, and ultimately became the organ of many harsh and oppressive proceedings.

Civil discord striking at the root of each social relation, furnished pretexts for the indulgence of malignant passions; and the public good, that oft-abused pretext, was interposed as a shield to cover offences which there were no laws to restrain.

The frequency of abuse, created a party interested both in its continuance and exemption from punishment, which at last became so strong, that it rendered the legislature of the state subservient to its views, and induced the enactment of laws attainting almost every individual whose connections subjected him to suspicion, who had

been quiescent, or whose possessions were large enough to promise a reward to this criminal cupidity.

It must not be supposed that these attempts were unresisted. On the contrary, those who were most efficient in their support of the revolution—those who had incurred the greatest losses—some of those to whom the contest had offered few other fruits than an uninterrupted sacrifice of feeling and property, and who might with much plausibility have thus reimbursed themselves—made a steady resistance to these arbitrary edicts; and when it was at last found to be unavailing, by appearing to unite in the measures of persecution, and by including in the number of the attainted the names of those whose proscription threatened to affect the personal interest of the most violent, showed them the danger of this game of intolerance.

These proceedings only exasperated the passions of the populace, and soon after the intelligence of peace, tumultuous meetings were convened under the thus disgraced name of "the sons of liberty," to denounce the tories, to menace them from returning to claim their estates, and to remonstrate with the legislature against measures that could affect titles by confiscation.

By the existing laws the annual election took place in the spring, but as the legislature was convened to meet in January, a proclamation was issued by the Governor, appointing a special election for the city of New York. At this election, held a few weeks after its evacuation, the members were chosen by a small part* of its excited population. They partook strongly of its feelings. The proscribed citizens petitioned for permission to return to their residences. This was a moment which magnanimity

* The highest vote was 249.

would have embraced to shield the defenceless, but Clinton, in his opening speech to the legislature, threw all the weight of his powerful influence into the popular scale. "While," he said, "we recollect the general progress of a war which has been marked with cruelty and rapine—while we survey the ruins of this once flourishing city and its vicinity—while we sympathise in the calamities which have reduced so many of our virtuous fellow-citizens to want and distress, and are anxiously solicitous to repair the wastes and misfortunes we lament," we cannot listen to these petitions.

The action of the legislature was in conformity with this unfeeling declaration. A petition being presented, the leading friend * of the Governor in the assembly immediately moved that it be laid upon the table, and on an amendment to refer it, eight of the nine † members from the city voted against the reference. Two bills followed, both originating in the Senate. One was entitled, "An Act declaring a certain description of persons without the protection of the laws of this State, and for other purposes therein mentioned." On its being considered, a member of the Senate, a violent noted partisan of Clinton,‡ moved an amendment, prescribing a test oath, which, though opposed by Schuyler and five other senators, was incorporated in the Act. It disfranchised the loyalists for ever. The council of revision rejected this violent bill, on the grounds that "the voluntary remaining in a country overrun by the enemy," an act "perfectly innocent," was made penal, and was retrospective; "contrary to the received opinions of all civilized nations, and even the known principles of

* Colonel Lamb.

† Colonel Rutgers was absent. Journal of Assembly, Feb. 4, 1784.

‡ Abraham Yates, jr.

common justice; and was highly derogatory to the honor of the State; that it was totally inconsistent with the public good, for so large a proportion of the citizens remained in the 'region' possessed by the British armies, that in most places it would be difficult, in many absolutely impossible, to find men to fill the necessary offices, even for conducting elections, until a new set of inhabitants could be procured"—that it was "directly in the face of the treaty," and instituted "a new court" in express violation of the constitution of the state. The act, nevertheless, passed by the votes of more than two-thirds of the members, under the specious title of "An Act to preserve the Freedom and Independence of the State."

The other bill was "An Act for the speedy Sale of Confiscated Estates," which, though also objected to by the Council of Revision, became a law on the same day.

Hamilton remarked, as to this test act, "A share in the sovereignty of the State, which is exercised by the citizens at large in voting at elections, is one of the most important rights of the subject, and in a republic ought to stand foremost in the estimation of the law. It is that right by which we exist a free people; and it certainly therefore will never be admitted, that less ceremony ought to be used in divesting any citizen of that right, than in depriving him of his property. Such a doctrine would ill suit the principles of the revolution, which taught the inhabitants of this country to risk their lives and fortunes in asserting their *liberty*, or, in other words, their *right* to a *share* in the government." He cautioned against "precedents which may in their consequences render our title to this great privilege precarious." Resolutions were also introduced—one, calling on the governors of the States to interchange lists of the banished persons in order, as was

professed, that the principles of the Federal union might be adhered to and preserved; another, that notwithstanding the recommendation of congress, they could not comply with the fifth article of the treaty. A memorial of one of these nine representatives of New York for a grant of a large body of land by the commissioners of forfeiture, and the fact, that another of them acquired his wealth by the purchase of confiscated property within that city, explain the motives of these arbitrary procedures. An Act to repeal the laws inconsistent with the treaty was also rejected by North Carolina.

It will be remarked, that through the whole of these proceedings intolerance sought to conceal its deformity under the mask of the demagogue—a watchful solicitude for liberty, and a distrust of designs to effect a revolution in the genius of the government.

It is an invidious office to accumulate testimony of the vitiated state of the popular feeling at this time, and to embody the evidence of facts tending to impair the national character, were not a lesson to be derived from them of infinite value—the tendency of the state governments in moments of excitement to violate the admitted maxims of public law, to disregard the most sacred obligations, and to encroach upon and undermine the rights of individuals, and that the only security of the American citizen against local violence and usurpation, is in his national character, and the broad protection which a well-balanced general government can alone give.

To show the extent to which the rapacious spirit of the times was carried, but one more instance will be adduced. It was a proposal to confiscate the estates of "the society instituted by a charter from the British government for the propagation of the gospel in foreign parts," in which light the British colonies and plantations were regarded in that charter—notwithstanding the fifth and sixth articles

of the treaty—notwithstanding the pure and benevolent purposes of its institution—notwithstanding that from its very nature it could not have had any agency in the war, nor have become the object of resentment and confiscation. This purpose called forth the indignant and determined opposition of Hamilton. He contended that a regard to honour, justice, and humanity, ought to be alone sufficient to restrain the legislature from wresting their estates from the hands of a charitable society which had committed no offence to incur a forfeiture; and *that* especially in an hour of profound tranquillity. That if the articles of the treaty had been silent on the subject of confiscation, yet under a general treaty of peace, it being an established maxim of the law of nations, which is a part of the law of the land, that every such treaty virtually implies an amnesty for every thing done during the war, even by an active enemy, that the rights of this society were therefore necessarily secured; and that as the exclusive right of making peace and war belonged to the great federal head of the nation, every treaty made by their authority, was binding upon the whole people, uncontrollable by any particular legislature, and that any legislative act in violation of the treaty, was illegal and void; and that upon a different construction, "the confederation, instead of cementing an honourable union, would, with respect to foreign powers, be a perfidious snare, and every treaty of peace, a solemn mockery."

However desirable it may have appeared to the magnanimous part of the community to bury their resentments from motives of benevolence, it became now apparent that their efforts could no longer be confined to mere persuasion, but that the fears of the considerate must be aroused to a general co-operation. The effect of popular violence, though steadily resisted by the American courts, was seen strongly operative in the councils of Great Britain. The

protection of the tories had, during the discussions of the provisional treaty, been a subject of much anxious negotiation. When she found that the recommendations of congress were wholly disregarded, England made these proceedings a ground for refusing the indemnities for spoliations stipulated by the treaty, and for what was a source of more general interest and alarm, a refusal to deliver up the frontier posts, which kept in awe the whole interior of the country. Hamilton, who, as early as the spring of seventeen hundred and seventy-eight, had been the open advocate, if the revolution should be effected, of a general act of amnesty and oblivion, could no longer brook the tyranny of a small number of active demagogues, the founders of the democratic party in the state of New-York.

He resolved to come forward as a mediator between the passions and the true interests of the people. With this view, early in the year seventeen hundred and eighty-four, he addressed a pamphlet "to the considerate citizens of New-York on the politics of the times, in consequence of the peace," under the signature of "PHOCION."

This brief production, written at a time when the author says "he has more inclination than leisure to serve the people, by one who has had too deep a share in the common exertions in this revolution to be willing to see its fruits blasted by the violence of rash or unprincipled men, without at least protesting against their designs," contains an earnest appeal to the friends of liberty, and to the true whigs, on the enormity of the recent laws passed by men "bent upon mischief, practising upon the passions of the people, and propagating the most inflammatory and pernicious doctrines."

The persons alluded to, he says, "pretend to appeal to the spirit of whigism, while they endeavour to put in motion all the furious and dark passions of the human mind. The spirit of whigism is generous, humane, beneficent, and

just. These men inculcate revenge, cruelty, persecution, and perfidy. The spirit of whigism cherishes legal liberty, holds the rights of every individual sacred, condemns or punishes no man without regular trial, and conviction of some crime declared by antecedent laws, reprobates equally the punishment of the citizen by arbitrary acts of the legislature, as by the lawless combinations of unauthorized individuals; while these men are the advocates for expelling a large number of their fellow-citizens unheard, untried; or, if they cannot effect this, are for disfranchising them in the face of the constitution, without the judgment of their peers, and contrary to the law of the land."

The danger of this arbitrary power, the extent to which it had been abused by being exercised against general descriptions of persons, are strongly portrayed. "Nothing is more common," Hamilton observed, "than for a free people, in times of heat and violence, to gratify momentary passions, by letting into the government principles and precedents which afterwards prove fatal to themselves. Of this kind is the doctrine of disqualification, disfranchisement, and banishment by acts of the legislature. The dangerous consequences of this power are manifest. If the legislature can disfranchise any number of citizens at pleasure by general descriptions, it may soon confine all the votes to a small number of partisans, and establish an aristocracy or an oligarchy; if it may banish at discretion all those whom particular circumstances render obnoxious, without hearing or trial, no man can be safe, nor know when he may be the innocent victim of a prevailing faction. The name of liberty applied to such a government, would be a mockery of common sense.

"The English whigs, after the revolution, from an overweening dread of popery and the pretender, from triennial, voted the parliament septennial. They have been trying ever since to undo this false step in vain, and are repenting

the effects of their folly in the overgrown power of the new family.

"Some imprudent whigs among us, from resentment to those who have taken the opposite side, (and many of them from worse motives,) would corrupt the principles of our government, and furnish precedents for future usurpations on the rights of the community.

"Let the people beware of such counsellors. However a few designing men may rise in consequence; and advance their private interests by such expedients, the people at large are sure to be the losers in the event, whenever they suffer a departure from the rules of general and equal justice, or from the true principles of universal liberty."

The profligacy of violating the treaty—a treaty in which Great Britain had made the most important concessions, and for which the only equivalent was a stipulation that there should be no future injury to her adherents—is then exposed. "Can we do," he asks, "by act of the legislature what the treaty disables us from doing by due course of law? This would be to imitate the Roman general, who, having promised Antiochus to restore half his vessels, caused them to be sawed in two before their delivery; or the Platææ, who having promised the Thebans to restore their prisoners, had them first put to death, and returned them dead. Such fraudulent subterfuges are justly considered more odious than an open and avowed violation of treaty."

The supremacy of congress on this subject, the dangers to result from the retaliatory acts of England by retaining the posts, and an exclusion from the fisheries, and the impolicy of measures which keep alive in the bosom of society the seeds of perpetual discord, are forcibly painted.

Motives of private advantage had been artfully held out to enlist the support of the artisans, by assuring them that to admit the tories would induce an injurious competition.

To this argument he replied, "There is a certain proportion or level in all the departments of industry. It is folly to think to raise any of them and keep them long above their natural height. By attempting to do it, the economy of the political machine is disturbed, and, till things return to their proper state, the society at large suffers. The only object of concern with an industrious artisan, as such ought to be, is, that there may be plenty of money in the community, and a brisk commerce to give it activity and circulation. All attempts at profit, through the medium of monopoly or violence, will be as fallacious as they are culpable.

"Viewing the subject in every possible light, there is not a single interest of the community but dictates moderation rather than violence. That honesty is still the best policy, that justice and moderation are the surest supports of every government, are maxims which, however they may be called trite, are at all times true; though too seldom regarded, but rarely neglected with impunity."

The pamphlet closes with the following emphatic appeal:—

"Were the people of America with one voice to ask—What shall we do to perpetuate our liberties and secure our happiness? The answer would be—GOVERN WELL, and you have nothing to fear either from internal disaffection or external hostility. Abuse not the power you possess, and you need never apprehend its diminution or loss But if you make a wanton use of it, if you furnish another example, that despotism may debase the government of the many as well as of the few, you, like all others that have acted the same part, will experience that licentiousness is the forerunner of slavery.

"How wise was that policy of Augustus, who, after conquering his enemies, when the papers of Brutus were brought to him, which would have disclosed all his secret

associates, immediately ordered them to be burnt! He would not even know his enemies, that they might cease to hate when they had nothing to fear. How laudable was the example of Elizabeth, who, when she was transferred from the prison to the throne, fell upon her knees, and thanking Heaven for the deliverance it had granted her from her bloody persecutors, dismissed her resentment. The reigns of these two sovereigns are among the most illustrious in history. Their moderation gave a stability to their government, which nothing else could have effected. This was the secret of uniting all parties.

"These sentiments," he added, "are delivered to you in the frankness of conscious integrity, by one who *feels* that solicitude for the good of the community which the zealots whose opinions he encounters profess; by one who pursues not, as they do, the honours or emoluments of his country; by one who has had too deep a share in the common exertions of this revolution, to be willing to see its fruits blasted by the violence of rash or unprincipled men, without at least protesting against their designs; by one who, though he has had in the course of the revolution a very *confidential* share in the public councils, civil and military, and has as often, at least, met danger in the common cause as any of those who now assume to be the guardians of the public liberty, asks no other reward of his countrymen, than to be heard without prejudice, for their own interest."

Soon after the publication of this pamphlet, which was extensively read in the United States and republished in London, various replies appeared, with the signatures of Gustavus, Anti-Phocionite, and others.

One more elaborate than the rest was issued under the name of Mentor, representing the inhabitants of the southern district of the state, who had remained under the control of the enemy, as aliens; and, therefore, as subject to

the complete discretion of the legislature, and wholly denying to them the protection of the treaty.

To this production, written by Isaac Ledyard, which Hamilton designated "a political novelty," he wrote an answer, entitled "Phocion's second letter, containing remarks on Mentor's reply."

In the beginning, he avowed that "whatever severity of animadversion had been indulged in his former remarks, was manifestly directed against *a very small* number of men, manifestly aiming at nothing but the acquisition of power and profit to themselves; and who, to gratify their avidity for these objects, would trample upon every thing sacred in society, and overturn the foundations of public and private security. That it was difficult for a man conscious of a firm attachment to the public weal, who sees it invaded and endangered by such men, under specious but false pretences, either to think or to speak of their conduct without indignation; and that it was equally difficult for one who, in questions that affect the community, regards principles only and not men, to look with indifference on attempts to make the great principles of social right, justice, and honour, the victims of personal animosity or party intrigue."

Having stated a few simple propositions, which embraced within their compass the principles of his argument, and having disproved by a complete and precise demonstration those of his opponents, he descanted with much force on the improper multiplication of oaths, and exposed the specious assertion, made without any limitation, that every government has a right to take precautions for its own security, and to prescribe the terms on which its rights shall be enjoyed.

"This right," he remarked, "is bounded, with respect to those who were included in the compact by its original conditions; only in admitting strangers, it may add new

ones. The rights too of a republican government are to be modified and regulated by the principles of such a government. These principles dictate that no man shall lose his rights, without a hearing and conviction before the proper tribunal; that previous to his disfranchisement, he shall have the full benefit of the laws to make his defence; and that his innocence shall be presumed till his guilt has been proved. These, with many other maxims never to be forgotten in any but tyrannical governments, oppose the aims of those who quarrel with the principles of Phocion."

"Among the extravagances," he observed, "with which these prolific times abound, we hear it often said that the constitution being the creature of the people, their sense with respect to any measure, if it even stand in opposition to the constitution, will sanctify and make it right. Happily for us, in this country, the position is not to be controverted that the constitution is the creature of the people; but it does not follow that they are not bound by it, while they suffer it to continue in force; nor does it follow, that the legislature, which is, on the other hand, a creature of the constitution, can depart from it on any presumption of the contrary sense of the people.

"The constitution is the compact made by the society at large and each individual. The society, therefore, cannot, without breach of faith and injustice, refuse to any individual a single advantage which he derives under that compact, no more than one man can refuse to perform his agreement with another.

"If the community have good reasons for abrogating the old compact, and establishing a new one, it undoubtedly has a right to do it; but until the compact is dissolved with the same solemnity and certainty with which it was made, the society as well as individuals are bound by it.

"All the authority of the legislature is delegated to them

under the constitution; their rights and powers are there defined; if they exceed them, 'tis a treasonable usurpation upon the power and majesty of the people; and by the same rule that they may take away from a single individual the rights he claims under the constitution, they may erect themselves into perpetual dictators.

"The sense of the people, if urged in justification of the measure, must be considered as a mere pretext, for that sense cannot appear to them in a form so explicit and authoritative as the constitution under which they act; and if it could appear with equal authority, it could only bind when it had been preceded by a declared change in the form of government. The contrary doctrine serves to undermine all those rules by which individuals can know their duties and their rights, and to convert the government into a government of will, not of laws."

The danger of subjugation by England had been warmly urged. He exhibited her condition at large, to show that it was groundless—the king at variance with his ministers—the ministers unsupported by parliament—the lords disagreeing with the commons—the nation execrating the king, ministers, lords, and commons; all these are symptoms of a vital malady in the present state of the nation. He then adverted to another often-repeated apprehension. "The danger from a corruption of the principles of our government is more plausible, but not more solid. It is an axiom that governments form manners, as well as manners form governments.

"The body of the people of this state are too firmly attached to the democracy, to permit the principles of a small number to give a different tone to that spirit. *The present law of inheritance, making an equal division among the children of the parent's property*, will soon melt down those great estates, which, if they continued, might favour the power of the few. The number of the disaffected,

who are so from speculative notions of government, is small. The great majority of those who took part against us, did it from accident, from the dread of the British power, and from the influence of others to whom they had been accustomed to look up. Most of the men who had that kind of influence are already gone. The residue and their adherents must be carried along by the torrent, and with very few exceptions, if the government is mild and just, will soon come to view it with approbation and attachment. There is a bigotry in politics, as well as in religion, equally pernicious to both. The zealots of either description are ignorant of the advantage of a spirit of toleration. It is remarkable, though not extraordinary, that those characters, throughout the states, who have been principally instrumental in the revolution, are the most opposed to persecuting measures. Were it proper, I might trace the truth of this remark, from that character which has been the first in conspicuousness, through the several gradations of those, with very few exceptions, who either in the civil or military line have borne a distinguished part."

These casual productions show his firmness and gentleness. His spirit was as bold as it was sympathizing. He hated oppression in all its forms, and resisted it in every shape. Governed by the highest principles, with them his lofty nature would admit no compromise; for he was accustomed to view infractions of them in all their remote consequences. Hence his denunciations of tyranny were universal and unsparing.

Alluding to the passing scenes, he observed, with intensest scorn—"How easy is it for men to change their principles with their situations—to be zealous advocates for the rights of the citizens when they are invaded by others, and, as soon as they have it in their power, to become the invaders themselves—to resist the encroachments of pow-

er when it is in the hands of others, and the moment they get it into their own, to make bolder strides than those they have resisted! Are such men to be sanctified with the hallowed name of patriots? Are they not rather to be branded as men who make their passions, prejudices, and interests the sole measure of their own and others' rights? The history of mankind is too full of these melancholy contradictions."

He closed with the following impressive observations:—

"Those who are at present intrusted with power in all these infant republics, hold the most sacred deposit that ever was confided to human hands. It is with governments as with individuals, first impressions and early habits give a lasting bias to the temper and character. Our governments hitherto have no habits. How important to the happiness, not of America alone, but of mankind, that they should acquire good ones! If we set out with justice, moderation, liberality, and a scrupulous regard to the constitution, the government will acquire a spirit and tone productive of permanent blessings to the community. If, on the contrary, the public councils are guided by humour, passion, and prejudice—if, from resentment to individuals or a dread of partial inconveniences, the constitution is slighted or explained away upon every frivolous pretext—the future spirit of government will be feeble, distracted, and arbitrary. The rights of the subject will be the sport of every vicissitude. There will be no settled rule of conduct, but every thing will fluctuate with the alternate prevalency of contending factions.

"The world has its eye upon America. The noble struggle we have made in the cause of liberty, has occasioned a kind of revolution in human sentiment. The influence of our example has penetrated the gloomy regions of despotism, and has pointed the way to inquiries which may shake it to its deepest foundations. Men begin to ask ev-

ery where, 'Who is this tyrant, that dares to build his greatness on our misery and degradation? What commission has he to sacrifice millions to the wanton appetites of himself and the few minions that surround his throne?'

"To ripen inquiry into action, it remains for us to justify the revolution by its fruits. If the consequences prove that we have really asserted the cause of human happiness, what may not be expected from so illustrious an example? In a greater or less degree, the world will bless and imitate.

"But if experience, in this instance, verifies the lesson long taught by the enemies of liberty—that the bulk of mankind are not fit to govern themselves—that they must have a master, and were only made for the rein and the spur—we shall then see the final triumph of despotism over liberty. The advocates of the latter must acknowledge it to be an ignis fatuus, and abandon the pursuit. With the greatest advantages for promoting it that ever a people had, we *shall have betrayed the cause of human nature!* Let those in whose hands it is placed, pause for a moment, and contemplate with an eye of reverence the vast trust committed to them. Let them retire into their own bosoms and examine the motives which there prevail. Let them ask themselves this solemn question—Is the sacrifice of a few mistaken or criminal individuals an object worthy of the shifts to which we are reduced to evade the constitution and our national engagements? Then let them review the arguments that have been offered with dispassionate candour, and if they even doubt the propriety of the measures they may be about to adopt, let them remember that in a doubtful case the constitution ought never to be hazarded without extreme necessity."

This glowing appeal, which repels all the allegations that Hamilton was the friend of arbitrary government—this appeal to the better sense of the people prevailed.

"The force of plain truth," as the author observed, "carried it along the stream of prejudice, and the principles it held out, gained ground in spite of the opposition of those who were either too angry or too much interested to be convinced." The bill, "declaring a certain description of persons without the protection of the laws," which Hamilton characterized as "an attempt to transfer the sceptre from the hands of government to those of individuals, to arm one part of the community against another, to enact a civil war," had passed. But its passage was fatal to the influence of those who had sustained it. The lessons of moderation and good faith which were inculcated, were soon found to be the lessons of true wisdom; and instead of looking upon the return of the tories with alarm and discontent, the reflecting part of the public admitted that their wealth would be subservient to the interests of the community, and while they acknowledged that their temporary influence might be prejudicial, were willing to confide our institutions to the irresistible current of free opinions.

These generous views extended rapidly. As the arts of peace advanced, the popular clamour gradually subsided, and the general sense of the country settled down in favour of the policy Hamilton had supported.*

The spirit of plunder, originating with the violent and unprincipled, disappointed in its aims, now turned upon him with its fellest rancour. From that hour of honest

* "The rising generation then just entering on the stage of action, readily imbibed those sentiments of temperate civil liberty, and of sound constitutional law, which Hamilton had so clearly taught and so eloquently inculcated. The benign influence of such doctrines, was happily felt and retained through the whole course of the generation to whom they were addressed. I speak for myself as one of that generation, that no hasty production of the press could have been more auspicious."—Chancellor Kent's Recollections.

triumph, he was marked as the object of incessant calumny. The sense of defeat, rankling in the breasts of the persecuting demagogues, united with other passions, and with the facility with which vicious sentiments usually associate, soon grew into an unscrupulous and unrelenting hostility.

But this feeling did not extend far. In all civilized societies the greater part are quiescent, and, as Hamilton observed, "were either for liberal or moderate measures, or, at most, for some legislative discriminations; a few only were very violent; the most heated were the warm adherents of the governor, and the objects of his peculiar patronage." They were rewarded for their intolerance—Hamilton was proscribed for his clemency.

Of the personal animosity which his opposition to democratic tyranny had awakened, a painful instance is related. There existed at this time an evening club, composed of persons conspicuous in the prosecution of these attainders, some of whom had written in opposition to "Phocion," and who felt themselves the deserved objects of its just denunciations.

Early in an evening of this meeting, it was proposed that Hamilton should be challenged, and in case the first challenger should fall, that others should challenge him in succession. At this moment Ledyard entered the apartment, and, on hearing the proposition, broke out with loud indignation. "This, gentlemen, never can be. What? you write what you please, and because you cannot refute what he writes in reply, you form a combination to take his life. One challenges, and if he falls, another follows!" By this remonstrance the blow was suspended.

Some time after, Hamilton, who had heard of the occurrence, was dining in company with Ledyard, when he was casually addressed as Mentor. He instantly arose, and taking him by the hand, exclaimed, "Then you, my dear

sir, are the friend who saved my life." Ledyard replied, "That, you know, you once did for me."

Of his professional efforts at this time, the traces among his papers are few and of little value. The practice of reporting adjudicated cases had not obtained. Stenography was unknown in America and the vestiges of the eloquence of the men whose genius embellished the infancy of our republic, are rare and imperfect.

The recollections of a youthful contemporary* remark Hamilton's "clear, elegant, and fluent style, and commanding manner. He never made any argument in court without displaying his habits of thinking, and resorting at once to some well-founded principle of law, and drawing his deductions logically from his premises. Law was always treated by him as a science founded on established principles. His manners were gentle, affable, and kind. He appeared to be frank, liberal, and courteous in all his professional intercourse." Referring to an important trial of this period, they state—"Hamilton, by means of his fine melodious voice and dignified deportment, his reasoning powers and persuasive address, soared above all competition; his pre-eminence was at once universally conceded."†

He continued throughout this and the succeeding year deeply engaged in his professional labours, as to which he observed—"Legislative folly had afforded so plentiful a

* Chancellor Kent.

† Chancellor Livingston was the opposite counsel. On the brief in this cause the following pleasantry is found.

"*Recipe for a good title in ejectment.*

Two or three void patents.

As many old ex-parte surveys.

One or two acts of usurpation, acquiesced in for a time, but afterwards proved to be such.

Half a dozen scripture allusions.

Some ghosts, fairies, elves, hobgoblins, and a quantum sufficit of eloquence."

harvest, that he had scarcely a moment to spare from the substantial business of reaping."

But his mind was never wholly withdrawn from an attention to the welfare of his fellow-citizens. The important benefits which he had anticipated from an extensive system of banking, on its true principles, have been shown at an early period of his life.

Could he have succeeded in establishing a well-organized general government, this would have been effected under its powers. But his expectations had been disappointed, and it was doubtful whether the union of the states would continue. Under these circumstances he determined to introduce a local bank, under franchises to be derived from the state.

His attention appears to have been called to this subject by a friend, who, dissatisfied with the Bank of North America, proposed the establishment of a bank in New-York.

While this was in contemplation, a plan of a land bank, of which another was the ostensible parent, but Chancellor Livingston the originator, was projected, and a petition for an exclusive charter was addressed to the legislature. "I thought it necessary," Hamilton observes in a letter to his friend, "not only with a view to your project, but for the sake of the commercial interests of the state, to start an opposition to this scheme, and took occasion to point out its absurdity and inconvenience to some of the most intelligent merchants, who presently saw matters in a proper light, and began to take measures to defeat the plan.

"The chancellor had taken so much pains with the country members, that they began to be persuaded that the land bank was the true philosopher's stone, that it was to turn all their rocks and trees into gold; and there was great reason to apprehend a majority of the legislature would have adopted his views. It became necessary to

convince the projectors themselves of the impracticability of their scheme, and to countervail the impressions they had made, by a direct application to the legislature."

To carry this plan into effect, a general meeting* of the citizens of New-York was convened, at which McDougal presided, and half a million of dollars were subscribed.

The constitution of the Bank of New-York, framed by Hamilton, was adopted, and he was chosen one of its directors, was chairman of the committee to prepare its by-laws, and was occupied in devising a mode for receiving and paying out gold, which had been done elsewhere by weighing in quantities; a practice attended with many evils, and for which, in the absence of a national coinage, it was difficult to find a substitute.†

The abuses of the banking system of this country have rendered it an object of prejudice; but he has thought little of its infant condition, who cannot trace to these institutions the most important public benefits.

Contemporaneously with them may be remarked the introduction of those habits of punctuality, which, by giving stability to domestic, and, as a consequence, to foreign credit, were highly instrumental in raising the character of the nation and advancing its commercial prosperity. And in the same degree in which can be seen the early introduction into the different states of an enlightened system of banking on commercial principles, in the same ratio the relative advances of those states may be traced.

A letter from La Fayette of this period invites attention

* February 26, 1784.

† The rates for the value of each foreign coin in circulation were fixed by the bank. A person was employed to regulate each piece according to the standard weight; and an allowance or deduction of three per cent. was made on each gold piece, as it exceeded or fell short of that value. To give effect to this arrangement, the chamber of commerce, on the 4th of May, 1784, adopted a regulation fixing a tariff of values

to another subject. After mentioning an intended visit to the Prussian and Austrian armies, he wrote:—"In one of your gazettes, I find an association against the slavery of negroes, which seems to be worded in such a way as to give no offence to the moderate men in the southern states. As I have ever been partial to my brethren of that colour, I wish, if you are in the society, you would move, in your own name, for my being admitted on the list."

This association, emanating from one previously formed in Philadelphia, was composed of individuals, of whom the most active were members of the society of Friends. At its second meeting Jay was chosen president, and a committee raised, of which Hamilton was chairman, to devise a system for effecting its objects.

Believing that the influence of such an example would be auspicious, he proposed a resolution that every member of the society should manumit his own slaves.

He never owned a slave; but on the contrary, having learned that a domestic whom he had hired was about to be sold by her master, he immediately purchased her freedom.

Others found the theory of humanity lighter than the practice. This resolution was debated and deferred. Disgusted with the pretensions of persons who were unwilling to make so small a sacrifice, he discontinued his attendance at these meetings.

The condition of New-York at this time is summarily shown in a letter from him to a friend. "Discrimination bills, partial taxes, schemes to engross public property in the hands of those who have present power, to banish the real wealth of the state, and substitute paper bubbles, are the only dishes that suit the public palate at this time."

While the sphere of his political usefulness was limited by such counsels, Hamilton kept aloof from party contests with the secondary men, who succeeded to the great ac-

tors in the revolution; and aware that a strong necessity could alone change the unhappy tendency of the public mind, he was content to pause, and, as he beautifully observed, "to erect a temple to time, to see what would be the event of the American drama."

CHAPTER XXXI.

THE failure of the imperfect union of the States either "to provide" prospectively "for the common defence," or "to establish justice," has been shown in the preceding narrative. Its utter incompetency "to promote the general welfare," by the protection of the national industry, and of national rights, or "to ensure domestic tranquillity;" thus failing, in every essential particular, "to secure" to the American people "the blessings of liberty," will now be seen.

The policy to be pursued in their intercourse with other nations would, it may be supposed, early engage the attention of a people by position and habit necessarily commercial. Hence it is perceived that before the declaration of independence, Congress had deliberated upon that subject.

The result of these deliberations was such as was to have been expected under their circumstances. It was a resolution to open the ports of the colonies to the world, excepting the inhabitants, productions, and vessels of Great Britain, and East India *tea*. This purpose of placing each nation on the footing of "natives," it has been seen, was proposed to France, but was relinquished, and that of the "most favored nation" adopted. This was also the basis of the treaties with Sweden and the Netherlands; in the latter of which, provisions were made defining the state of block-

ade, and securing to the people of either country "an entire and perfect liberty of conscience."

But what should be the terms of intercourse with Great Britain, was the most interesting question.

Soon after Oswald had received his commission recognising this country as an independent nation, Jay prepared the plan of a treaty of commerce, which he submitted to him. This plan proposed that it should be on the footing of "natives." The proposition being announced to congress by Franklin, was referred.

Instructions were reported,* that "in any commercial stipulations with Great Britain," the commissioners were "to endeavour to obtain a direct commerce with all parts of the British dominions and possessions, in like manner as all parts of the United States may be opened to a direct commerce of British subjects; or at least, that such direct commerce be extended to all parts of the British dominions and possessions in Europe and the West Indies;" and they were informed, "that this stipulation will be particularly expected by congress," in case the footing of natives was admitted. Their attention was again called to this subject by a letter from Adams, in which, after reminding them of the revocation of his former powers, he urged the appointment of a resident minister at London; and having referred to the injustice which would be done to him who was the first object of his country's choice, should any other be appointed, he indicates to that body the qualifications† necessary for an American foreign minister genc-

* By Madison.

† "In the first place, he should have had an education in classical learning, and in the knowledge of general history, ancient and modern, and particularly the history of France, England, Holland, and America. He should be well versed in the principles of ethics, of the law of nature and nations, of legislation and government, of the civil Roman law, of the laws of England and the United States, of the public law of Europe, and in the letters,

rally, and above all, to the court of St. James." This remarkable despatch was referred to a committee of which Hamilton was chairman. His views on this subject had

memoirs, and histories of those great men who have heretofore shone in the diplomatic order, and conducted the affairs of nations and the world. He should be of an age to possess a maturity of judgment arising from experience in business. He should be active, attentive, and industrious, and above all, he should possess an upright heart, and an independent spirit, and should be one who decidedly makes the interest of his country—not the policy of any other nation, nor his own private ambition or interest, or those of his *family*, friends, and *connections*—the rule of his conduct.

"We hear so much said about a genteel address, and a facility in speaking the French language, that one would think a dancing master and a French master the only tutors necessary to educate a statesman. Be it remembered, the present revolution, neither in America nor Europe has been accomplished by elegant bows, nor by fluency in French, nor will any great thing ever be effected by such accomplishments alone. A man must have something in his head to say before he can speak to effect, how ready soever he may be at utterance. And if the knowledge is in his head and the virtue in his heart, he will never fail to find a way of communicating his sentiments to good purpose. He will always have excellent translators ready, if he wants them, to turn his thoughts into any language he desires.

"As to what is called a fine address, it is seldom attended to after a first or second conversation, and even in these it is regarded no more by men of sense of any country than another thing, which I heard disputed with great vivacity among the officers of the French frigate, the SENSIBLE. The question was, what were the several departments of an ambassador and a secretary of legation. After a long and shrewd discussion, it was decided by a majority of votes, 'that the secretary's part was to do the business, and that of an ambassador * * * * * * .' This decision produced a laugh among the company, and no ideas of the kind will ever produce any thing else among men of understanding.

"It is very true that it is possible that a case may happen, that a man may serve his country by a bribe well placed, or an intrigue * * * * * * . But it is equally true, that a man's country will be sold and betrayed a thousand times by this infamous commerce, where it will be once served. It is very certain that we shall never be a match for European statesmen in such accomplishments for negotiation, any more than, I must and will add, they will equal us in any solid abilities, virtues, and application to business, if we choose wisely among the excellent characters with which our country abounds."—7 D. C. 21.

long been formed; he was of the opinion that it ought to be "the basis of our commercial system not to make particular sacrifices, nor to expect particular favours." Though the advocate of a reciprocal freedom of commerce, it has been seen that he was fully sensible of the importance of the power of protecting the peculiar interests of a community where, from the previous colonial restrictions, there was little diversity in the pursuits of industry.

But the powers of the confederacy were inadequate to this object, the policy of England was not developed, and, until those powers were enlarged and that policy disclosed, he felt that a temporary arrangement would be most expedient.

Under this conviction, and not satisfied by the despatch from Adams, of the wisdom of intrusting to him the sole conduct of so important a negotiation, he reported a resolution* that Franklin and Jay should be empowered with him, or either of them in the absence of the others, "to enter into a treaty of commerce between the United States of America and Great Britain, subject to the revisal of the contracting parties previous to its final conclusion; and in the mean time, to enter into a commercial convention to continue in force one year," and "that the secretary for foreign affairs should lay before congress, without delay," a plan of a treaty of commerce, and instructions to be transmitted to the commissioners.

This plan proposed a direct commerce with Great Britain, except as to such articles, the importation or exportation of which might be prohibited in all her dominions, excepting the territories of the East India and Hudson's Bay companies; the subjects of Great Britain paying the same duties in the United States as the citizens of the

* May 1, 1783.

United States paid in Great Britain, and which were not to exceed those paid by the most favoured nations,—participating in any concession freely, if freely made, or if conditional, allowing a similar compensation. In neither country were the citizens or subjects of the other to be regarded as aliens, except as to an exemption from military duty.

The plan* being referred on the nineteenth of June, instructions to the envoys were reported. They strongly urged the articles as to a free commerce, on the ground that the immunities offered to British subjects, particularly those permitted to settle in the United States, were a full equivalent, as they would probably direct their trade into such channels as England would prefer. If these terms could not be obtained, others as similar to them as possible were to be obtained, and they were directed "to bear in mind that the great leading object of these states, was to find the West India market open for their own produce, and to be permitted, as far as possible,

* Madison to Jefferson, May 13, 1783.—"A project for a treaty of commerce with Great Britain has been reported by the secretary of foreign affairs, and is now in the hands of a committee. The objects most at heart, are—first, a direct trade between this country and the West Indies; secondly, a right of carrying between the latter and other parts of the British empire; thirdly, a right of carrying from the West Indies to all other parts of the world. As the price of these advantages, it is proposed that we shall admit British subjects to equal privileges with our own citizens. As to the first object, it may be observed, that the bill lately brought into the British parliament, renders it probable that it may be obtained without such a cession, as to the second, that it *concerns the eastern states chiefly;* and that as to the third, *that it concerns them alone.* Whilst the privilege to be conceded, will chiefly, if not alone, affect the southern states. The interest of these, seems to require that they should retain, at least the faculty of giving any encouragement to their own merchant-ships or mariners, which may be necessary to prevent a relapse under Scotch monopoly, or to acquire a maritime importance. The eastern states need no such precaution."—Madison Papers, vol. 1, p. 531.

to be the carriers of theirs." The trade of the coast of Africa, and permission to cut wood in the bay of Honduras, were indicated as desirable. They were to represent as inducements to the grant of these advantages, that unless these channels were opened to America, she would be without the means of paying for the manufactures required, and be compelled to manufacture for herself. But if a market was given for her raw materials, agriculture, and not manufactures, would be encouraged. They were in no event to conclude any treaty, unless the trade with the West Indies was placed on its former footing. It was not to be definitive until approved by congress, but a convention on these principles might be entered into, to endure one year.

The expediency of making an admission to the West India market an indispensable condition, was doubted. It was still "a fundamental law of Europe, that all commerce with a foreign colony shall be regarded as a mere monopoly."* That a nation so fenced in by monopolies, and which then considered it as a cardinal maxim to secure to herself the exclusive trade of her colonies, would relax in favour of the United States, so recently revolted, was little to be expected. Indeed, the people of this country did not, at the beginning of the revolution, expect it. In the address of congress to the inhabitants of Great Britain, made in seventeen hundred and seventy-five, they declared, "We cheerfully consent to such acts of the British parliament as shall be restrained to the regulation of our external commerce, for the purpose of securing the commercial advantages of the whole empire to the mother country, and the commercial benefit of it to its respective members."

Under these considerations, and unwilling to interpose

* Montesquieu, liv 21, cap. 17.

so serious an impediment to a treaty, and, on the part of some, to recognise the policy that America was to continue a merely agricultural nation, this resolution was postponed. In the ensuing month,* the minister of France anxious to secure to his country a monopoly of the American trade, announced to congress that he would not sign a treaty but in concert with the United States, and at the same time condemned "the too precipitate admission of British vessels into the American ports."

The statesmen of England had, in the mean time, also been occupied with this subject. It has been seen, that while the party which plunged their country into this disastrous conflict—still clinging to the hope of recovering their popularity, by soothing the pride of the nation, and obedient to the prejudices of the monarch—shrank from the express acknowledgment of independence, their opponents, during the brief ascendency of Fox, whose enlightened mind was governed by an enlarged philanthropy, took a different view.

He contended that it became the British government to tender an absolute, unconditional acknowledgment of independence in the first instance, as a measure not less due to her national character, than prompted by her best interests. Similar difference of opinion existed as to the policy which ought to govern the commercial relations of the two countries. William Pitt, asserting the power of his high ability over the councils of Great Britain, warmly advocated a liberal system. "It was a matter of joy to him," he declared, "that America had accepted the recognition of her independence as the price of peace. It was a solid foundation, on which future union with that country might be framed. It was his belief, that both nations would still be connected in interest as well as friendship."

* July 21, 1783.

Fox, contemplating an open trade between the two countries, moved to bring in a bill preventing the requiring any manifest or other document from vessels of the United States, entering thence into British ports, or clearing in British for their own ports.

The commanding prospective views of these great statesmen were approved by a large body of the merchants. But the bill was opposed in every stage of it by the navigating interest, as an infraction of existing treaties; as a violation of the policy of the navigation act, which, it was contended, by the terms of the settlement with Ireland, would have been wholly repealed, as respected that kingdom, if repealed in any particular affecting England; as a measure unequal in its operation on different parts of the empire, and not warranted by the spirit of the treaty between the United States and France. It was the appeal of established opinions to national prejudices; an appeal rarely unsuccessful. Jenkinson approved the policy, but objected to the bill. Eden, beside its conflict with the act of navigation, declared it would open to the United States the whole carrying trade to the West Indies, and moved an amendment to give to the crown for a limited time, certain powers for the better carrying these purposes into execution. Though Shelburn opposed, this amendment prevailed, and the crown was authorized to make temporary regulations.

The policy of these regulations obviously was to monopolize the navigation. In the direct trade between the West Indies and England, the tropical products were bulky, and required a large tonnage. The wants of the islands only gave small outward freights. It was intended to supply these by the carriage to the United States, thence to the West Indies, and from the West Indies, by a return cargo, to the mother country.

The course of the negotiations on the part of England partook of the fluctuations in her councils. Not long after the signature of the preliminary articles, the king of England *instructed* Hartley to negotiate a treaty of commerce with the United States. This informality was objected to, and he was subsequently duly *commissioned.* A proposition* for a temporary convention, authorizing a mutual intercourse on the footing of "*natives,*" was made on behalf of this country. England declined assenting to it. Hartley then offered to place the trade of the two countries on the same basis as that upon which it had existed before the war; but excluding American citizens from a direct intercourse between the British West Indies and the mother country. This also proved to be unauthorized, and no further instructions were given.

The British ministry, acting on the power of regulation recently conferred upon them, issued two proclamations; the first of which restrained the importation of the produce of the United States to British vessels, navigated according to her laws, or to vessels belonging to the state of which the cargo was the produce;† and the other, in effect, absolutely prohibited American vessels or citizens from trading to the British colonies. Convinced that no advantage could be derived from longer delay, the definitive treaty of peace, which was a copy of the provisional articles, was signed on the third of September, seventeen hundred and eighty-three.

Soon after this event, copies of the recent proclamations were received by Congress from their ministers, who an-

* The article submitted by Jay proposed to exclude the importation of slaves.

† Several staples of the United States were also excluded, even in British bottoms.

nounced propositions for entering into treaties by several leading European powers.

The conduct of England was supposed to indicate the importance of such treaties, and instructions were passed, declaring the principles on which these negotiations should be commenced. They were to have for their basis the mutual advantage of the contracting parties, on terms of equality and reciprocity, and not to be repugnant to their existing treaties. The report of June, as to the terms of a treaty with Great Britain, was thus superseded.

These resolutions passed on the twenty-ninth of October, eighty-three.

This may be regarded as the closing event of the American revolution. With some things to regret, as in all human affairs, there is much to admire and much to applaud in its character and conduct. The scene now changes. Without honest counsels or wise concert for the common weal, selfish passions and selfish purposes are beheld in sad ascendency, marring every great public interest, till Washington wrote, "to be more exposed in the eyes of the world, and more contemptible, than we already are, is hardly possible."

On the third of November, a new Congress assembled at Princeton, when, seven States being represented, a President was chosen, and the next day Jefferson took his seat. The prominence he had already attained, and the still greater prominence he subsequently attained, render a brief recurrence to his past career not inappropriate. His father, Peter,* was of Welch extraction, and as his ancestry is not traced, probably little of it was to be known. He commenced life as a millwright, then becom-

* These facts are all derived from his biographers, George Tucker, and H. S. Randall.

ing a surveyor, he selected a body of land, plain and hill side, near the gap of the Rivanna, and obtained a patent. This, then frontier tract, marked with the recent trails of Indians, he called "Shadwell." On this spot, subsequently known as "Montecello," was born, in the year seventeen hundred and forty-three, Thomas Jefferson, his mother being of the influential family of the Randolphs. Though of limited means, his father wisely gave him all the advantages of education, at that time to be commanded in Virginia. From school he passed into the college of William and Mary, where he acquired the mathematics and classics, in neither a proficient. Williamsburgh being the seat of government, Jefferson was admitted to the society of Governor Fauquier,* alleged to have had upon him an unhappy influence. Here he probably formed the easy, flexile manners which served him much in after life, and caused to be forgotten an appearance not well favored.†

On reaching manhood, he became a practitioner of law; and, at six-and-twenty, was elected by his native county to the House of Burgesses. There he took little part in debate, owing to a physical infirmity,‡ of long duration, but became distinguished for his pen. Thus, when the political storm was rising, the resolutions for a committee of correspondence are ascribed to him. Being asked to propose them, he declined the honor.§ A convention of the State soon after met, when he was selected to draw instructions for the delegates to Congress. Falling sick on the way, he was not present, and his instructions were not presented.

* A disciple of Shaftesbury and Bolingbroke.—Randall, i. 31.

† Tucker thus describes him, vol. i. p. 29: "He was tall, thin, and raw-boned, had red hair, a freckled face, and pointed features."

‡ Randall, i. 50. "His voice began to sink in his throat."

§ Tucker, i. 52.

Early in seventy-five, he was elected a deputy-substitute, in case Peyton Randolph should not attend, to the second Congress, where he took his seat, and prepared part of one of its most important documents—a declaration of the causes of taking up arms.* On the eleventh of August, seventy-five, he was chosen a full member of Congress. Fourteen days after, the convention of Virginia having resolved to raise a regular force, and to embody its militia, Jefferson addressed a private letter to a kinsman, the Royal Attorney-General, "who, taking sides with the government, was about to leave Virginia for England."† In this letter, he avowed that he "would rather be in *dependence* on Great Britain, properly limited, than on any nation on earth, or than *on no nation*,‡ a predilection repeated by him to the same loyal officer, not long after.§ These letters have been variously interpreted.‖ A month later, on the twenty-eighth of December, he *withdrew*¶ from Congress, and regardless of the great intervening measures preparatory to war, and of its being actually authorized by that body,** he did not resume his seat until the middle of the following May. Virginia, at this time, preconcerting independence, left him no option but to return.

Congress, acting directly on the instructions of that State, resolved on independence, and he was appointed

* Tucker, i. 78.

† John Randolph.—ibid. i. 84, 85.

‡ Randall, i. 122.

§ Nov. 29, 1775.

‖ Lee's Observations, 239. Randall, i. 121.

¶ We are not able to state positively the occasion of this absence, but the presumption would seem to be that it finds its explanation in the antecedents of the fact thus stated in his pocket-book account: "March 31, 1776—My mother died about eight o'clock this morning."

** March 23, 1776.

chairman of a committee to prepare a declaration of it, which duty, it has been seen, he ably performed.

A new Congress was chosen to conduct the operations of the war. Jefferson, being elected a member *declined*, and on the *second of September*, when the tidings reached Philadelphia of the defeat at Long Island, and the retreat of the army, forgetting the recent public pledge of "his life and fortune, and sacred honor," he RESIGNED his seat in Congress, and "*the next day set out for Virginia.*"*

It cannot but be regarded as a sad fact in the history of this republic, to which all time must point derisively and with sorrow, that two men, Jefferson and Adams, so prominent as to be charged with the Declaration to the world of American Independence, deserted their posts at its most trying crisis, thus discouraging the people, and encouraging the enemy. Had other leaders been of like temper, the result inevitably must have been, not a revolution full of glories and of blessings, but a short-lived, craven, abortive rebellion. All the circumstances considered, in vain will a parallel be sought.

Escaped from the scene of conspicuous, imminent danger, Jefferson, in October, took his seat again in the House of Burgesses, of which he continued a member part of three successive years. There, his presence was soon felt in the introduction of bills, parts of a comprehensive and

* Randall, i. 198. Memoir by Jefferson, Works, i. 29. "Our delegation had been renewed for the ensuing year, commencing Aug. 11, but the new government was now organized, a meeting of the legislature was to be held in October, and I had been elected a member by my county. *I knew* that our legislation, under the regal government, had many very vicious points which *urgently* required reformation, and I thought I could be *of more use* in forwarding that work. I *therefore retired from my seat in Congress* on the 2d of September, *resigned it*, and took my place in the legislature on the 7th of October."

important system of legislation, and in the revision, with "able coadjutors," of the existing laws.

On the first of June, seventy-nine, he was, as has been related, elected Governor by the legislature. His delinquency in the fulfillment of its duties, before partially disclosed, but of which fuller evidence exists, has been shown. Defending himself as to almost every other period of his history, it would seem remarkable that he should have left this part of his story to a foreigner, tracing it in secrecy under his own eye.* But his own brief posthumous allusion to it is not to be mistaken. "From a belief," he states in a memoir of his life, "that, under the pressure of the invasion under which we were then laboring, the public would have more confidence in a military chief, and that the military commander, being invested with the civil power also, both might be wielded with more energy, promptitude, and effect for the defence of the State, I resigned the administration at the end of my second year, and General Nelson was appointed to succeed me."

Were it a question of military capacity, this plea might have served; but it was a point of honour, of personal courage, of fidelity to his station, and to his State.

What is this but a cry for quarter? unmanning himself by the poor excuse, that he was not educated to the command of armies. Of the heroes of the revolutionary war, how many had been educated to arms? Were Prescott and Warren, Knox and Pickering, Greene and

* Mr. Girardin, "who wrote," Jefferson relates (Works, i. 41), "his continuance of Burke's history of Virginia, while at Milton, *in this neighborhood, had free access to all my papers*, while composing it, and has given as faithful an account as I could myself. For this portion, therefore, of my own life, I refer altogether to his history."

Olney, Smallwood and Howard, Lee and Morgan, Graham and Marion, soldiers by education? Did they wait to be solicited, importuned, besought to incur hazard for their country? or did they rush foremost and onward, seeking, soliciting posts of danger; and by their example, making posts of danger—posts to be sought, solicited above all others, by the brave of their countrymen, rich and poor, old and young, educated and untaught, clergy and laity, even by its women? Jefferson makes no defence, demands no investigation. His absolution by the legislature, of which he was a member, was the absolution of a penitent, granted twelve months after the offence, in most guarded terms—not an acquittal from charges preferred, for they were smothered. Knowing its little value, this absolution did not content him. Though remaining a member of that body, he did not attend its ensuing session. His élève, Monroe, also a member, urges his presence. His reply shows not the indignant sense of undeserved dishonor, but his humiliation and his shame, talks of satisfied ambition, his passion for private life, and "mental quiet," of his consultation of what best suited *self;* and admits his consciousness of universal condemnation.

"Before I ventured to declare to my countrymen my determination to retire from public employment, I examined well my heart to know whether it were thoroughly cured of every principle of political ambition, whether no lurking particle remained which might leave me uneasy, when reduced within the limits of mere private life. I became satisfied, that every fibre of that passion was *thoroughly eradicated.* I examined also, in other views, my right to withdraw. I considered that, by a constant sacrifice of time, labor, parental and friendly duties, I had, so far from gaining the affection of my countrymen, which

was the only reward I ever asked or could have felt, *even lost the small estimation I had before possessed.* (That, however, I might have comforted myself under the disapprobation of the well meaning, but *uninformed people*, but that of their *representatives* was a *shock* on which I had not calculated.) But, in the meantime, I had been *suspected* in the eyes of the world, without the least hint then or afterwards, being made public, which might restrain them from supposing, that I stood arraigned for *treason* of the *heart*, and not merely *weakness* of the *head;* and I felt that these injuries, for such they have been since acknowledged, had inflicted a wound on my spirit which will only be cured by an all-healing grave." *

Ere six months had elapsed,† being appointed, on the motion of Madison, as previously stated, a commissioner to join in the pending negotiation at Paris, he repaired to Philadelphia.

He had declined a mission in seventy-six, instituted to obtain the all-important aid of France.‡ Again appointed, early in eighty-one, he again declined. It was now stated in his behalf, that a recent domestic calamity had probably changed his sentiments that "all the reasons for his original appointment still existed, and had acquired additional force, from the improbability, that Laurens would actually

* May 20, 1782. Yet Madison wrote him, January 15, 1782: "Your favor of the — day of —, written on the eve of your departure from Richmond, came safe to hand by the last week's post. The result of the attack on your administration was so fully anticipated that it *made little impression on me.*"

† Nov. 12, 1782.

‡ Jefferson's Works, i. 41. The quotstion in note, vol. ii. 469, is erroneously referred to his second declension. This error is, however, of no moment, as Jefferson writes on the same page, "The *same reasons* obliged me still to decline."

assist in the negotiation." * This appeal prevailed.† But a summary superseding of Laurens, from peculiar circumstances, must have been offensive to a generous mind; and advices from Europe rendered welcome a resolution, which passed, that Jefferson "must not proceed on his intended voyage, until further instructions." Owing to the same cause which had before deterred him, "the vigilance of British cruisers," his departure was delayed, and, intelligence being received of the conclusion of the Provisional treaty, Hamilton, as chairman of a committee, reported on the first of April, eighty-three, "that the object of his appointment was so far advanced as to render his services no longer necessary." ‡

This report, made solely on adequate public grounds, being slightly modified, was accepted. As Jefferson never forgave any man, by whom he was thwarted in a favourite object, it may well be supposed, that the source of this disappointment would not be forgotten. The dissatisfaction would not be less, if Jefferson believed that Hamilton's knowledge, as a member of Washington's staff, and as the friend of Steuben, of his delinquency in Virginia, had increased his disinclination to confide to him the great, pregnant interests of the country. He had penetrated Jefferson's tendencies, and felt assured that the negotiation was "in good hands."

* Madison's Debates, i. 196.

† Dec. 30, 1782: "Mr. Jefferson arrived here on Friday last, and is industriously *arming* himself for the *field of negotiation*. The commission issued to Mr. Oswald impresses him with a hope that he may have *nothing to do* on his arrival but join in the celebration of victory and peace. Congress, however, *anxiously* espouse the expediency of his *hastening* to his destination." March 11, 1783, "Mr. Jefferson is still here *agitated*, as you may suppose, *with the suspense in which he is kept*. He is anxious as myself, for your going into the legislature."—*Madison to Edmund Randolph, Debates*, i. 495, 514.

‡ Vol. i. 25, Hamilton's Autograph, Department of State.

A mission to Europe was still Jefferson's absorbing desire. No mode of attaining it was more probable than his again being seated in Congress. He returned forthwith to Virginia. This was the time for oblivion, and blandishment, and solicitation. The men of real firmness, mourning over the disgrace he had brought upon the state, had retired to their distant homes. New men were in the political field in the hands of skilful managers. Edmund Randolph, his kinsman, was then attorney-general. James Monroe, his former pupil, was a member of the Burgesses. Madison, bound as with a spell under his influence, retired from congress to give him place. At this moment of languor and of weakness, when this waning body was almost mocked, when the confederation was approaching its dissolution, Jefferson was proposed, as it would seem, to witness its expiring hours. He was chosen a delegate, conjointly with Monroe,* on the sixth of June; and on the second day of its session, after an interval of more than seven years, took his seat in a council over which Mifflin was elected to preside, and where Gerry was almost a leader.

Two days after, Congress was adjourned to meet at Annapolis, the capital of a state, whose statesmen never shrunk from danger, and whose soldiers would not retreat. Here a quorum was not formed until the thirteenth of December, on which day seven states were represented.

A week after, Washington arriving, announced to congress his intention to ask leave to resign his commission, "desiring to know their pleasure in what manner it will be most proper to offer his resignation, whether in writing, or at an audience." On Tuesday the twenty-third, he was admitted to a public session.

* Their colleagues were, S. Hardy, Arthur Lee, and John Francis Mercer.

Ere this audience took place, on the morning of this day, Washington performed one of the most graceful acts of his life. Nearly twelve months before, Hamilton reported resolutions to congress, declaring "that the sacrifices and services of the Baron de Steuben, justly entitle him to the distinguished notice of congress, and to a generous compensation." The old baron, as Hamilton affectionately called him, was suffering from the impoverishment of the nation. Poor himself, and almost without hope, he was waiting a remote justice, the delay of which the veteran could with difficulty comprehend.

Washington wrote to him: "Although I have taken frequent opportunities, both public and private, of acknowledging your great zeal, attention and abilities, in performing the duties of your office; yet I wish to make use of this last moment of my public life to signify, in the strongest terms, my entire approbation of your conduct, and to express my sense of the obligations the public is under to you, for your faithful and meritorious services. I beg you will be convinced, my dear sir, that I should rejoice, if it could ever be in my power to serve you more essentially than by expressions of regard and affection; but, in the mean time, I am persuaded you will not be displeased with this farewell token of my sincere friendship and esteem for you. This is *the last letter* I shall write, while I continue in the service of my country. The hour of my resignation is fixed at twelve to-day; after which I shall become a private citizen on the banks of the Potomac, where I shall be glad to embrace you, and testify my great esteem and consideration."

At the appointed hour, Washington entered the hall of congress, conducted by its secretary, and took his seat. The scene had a simple, touching grandeur, which military and civic pomp would have lessened.

The presence of a few ladies of distinction, of the functionaries of Maryland and of a few general officers, compensated for the absence of many members of that body, only twenty delegates being present, who received him, as was the usage on such occasions, seated and covered.

After a pause, the president informed him that the United States, in congress assembled, were prepared to receive his communications. The retiring soldier was now in his fifty-second year. His hair a little gray, his light blue eyes, fair florid cheeks spoke his English descent. His serene, solemn countenance told of past solicitudes and toils, while his modesty showed that temptation had left him without leaving a sigh behind, conscious virtue appearing in virtue's proper garb. He arose conspicuous for his tall, manly form, and with a majestic dignity no crowned head, under "emblazoned canopy," * amid all the splendour and surroundings of imperial retinue, ever surpassed, briefly addressed the council of the nation: "The great events on which my resignation depended, having at length taken place, I have now the honour of offering my sincere congratulations to congress, and of presenting myself before them, to surrender into their hands the trust committed to me, and to claim the indulgence of retiring from the service of my country. Happy in the confirmation of our independence and sovereignty, and pleased with the opportunity afforded the United States of becoming a respectable nation, I resign with satisfaction the appointment I accepted with diffidence in my abilities to accomplish so arduous a task; which however was superseded by a confidence in the rectitude of our cause, the support of the supreme power of the Union, and the

* Prescott's Philip the Second, i. ii.

patronage of heaven. The successful termination of the war has verified the most sanguine expectations; and my gratitude for the interposition of Providence, and the assistance I have received from my countrymen, increases with every review of the momentous contest. While I repeat my obligations to the army in general, I should do injustice to my own feelings, not to acknowledge in this place, the peculiar services and distinguished merits of the gentlemen who have been attached to my person during the war. *It was impossible the choice of confidential officers to compose my family should have been more fortunate.*— I consider it," he added, "an indispensable duty, to close this last act of my official life by commending the interests of our dearest country to the protection of Almighty God, and those who have the superintendence of them to his holy keeping. Having now finished the work assigned me, I retire from the great theatre of action, and bidding an affectionate farewell to this august body, under whose orders I have so long acted, I here offer my commission, and take my leave of all the employments of public life."

Under the moving influence of female tears, the President replied, acknowledging "his wisdom and fortitude, invariably regarding the rights of the civil power through all disasters and changes."—"Having defended the standard of liberty in this new world," he remarked, "having taught a lesson useful to those who feel oppression, you retire from the great theatre of action, with the blessings of your fellow-citizens, but the glory of your virtues will not terminate with your military command; it will continue to animate remotest ages."

This duty performed, Washington repaired, unattended, to Mount Vernon. "He was, perhaps, the only man who ever conducted and terminated a civil war,

without having drawn upon himself any deserved censure," is the just tribute of a companion in arms to his excelling virtue.*

It may, indeed, be truly said, that he was the only man into whose mind, with a devoted army and amid an idolizing people, the wish of increased or prolonged power never entered.

This ceremony being concluded, congress adjourned, and such was the remissness of the members, that notwithstanding a call upon the States, urging the necessity of ratifying the definitive treaty, a meeting of nine States was not had until the fourteenth of January, when the treaty was definitively ratified, and a resolution was adopted, recommending the restitution of confiscated property.

A provision for the interest on a part of the debt was brought under consideration the following day, by a memorial from the holders of loan-office certificates, when a declaratory resolution was adopted, that they were not subject to depreciation. A representation by the foreign officers, not attached to the state lines, of the hardships incurred by them from being paid in depreciated paper, was soon after communicated, and directions were given to the superintendent of finance to pay them such sums, *on account of their pay*, as would relieve them from their embarrassments, and enable them to return to Europe. With the exception of the acceptance from Virginia of a cession of her western territory,† nothing

* Memoires de Segur.

† The deed of cession contained this provision—"That all the lands within the territory so ceded to the United States, and not reserved for, or appropriated to any of the before mentioned purposes, or disposed of in bounties to the officers and soldiers of the American army, shall be considered as a *common fund*, for the use and benefit of such of the United States, as have be-

of moment, owing to the continued remissness of the delegates, was done until the month of April, when the grand committee, of which Jefferson was chairman, presented a report on the finances. This document—after exhibiting an account for the interest on the debt, and the current services of the year seventeen hundred and eighty-four, of five millions four hundred and eighty thousand dollars, and referring to the resolutions of the last congress for the establishment of an impost, the delay of which rendered other measures necessary for the discharge of the debt—proceeded to represent, that as to twelve hundred thousand dollars of interest, it was not embraced in the account, because as the requisition of seventeen hundred and eighty-two had given license to the states to apply the requisite part of their quotas to the payment of interest on the loan office, and other liquidated debts of the United States, they *supposed* that the "actual payment of these quotas had been uncommunicated to the office of finance." It then urged, that the United States should communicate to that office the amount paid, and hasten the collection of the residue. It next inquired, whether any surpluses remained of former requisitions; and in this inquiry, proceeding on the ground that for part of those requisitions certificates were received, which were transferred to the fund proposed to be raised by the impost, the result was arrived at, that a surplus remained exceeding five and a half millions of dollars, which surplus it was proposed to apply to the existing demands; in order to prevent any new requisitions, not a sum equivalent to these demands,

come or shall become members of the confederation or federal alliance of the said states, Virginia inclusive, according to their several respective proportions in the general charge and expenditure, and shall be faithfully and *bona fide* disposed of for *that purpose* and for *no other use or purpose whatsoever*". This deed was executed, March 1, 1784, by Jefferson, Lee, Hardy, and Monroe.

but from a regard to the "exhausted state of the country," three-fourths of it.

The "abler states" were then "encouraged" to contribute as much more as was practicable, to be applied to the payment of the interest and principal of the debt, and to be credited in future requisitions; and an assurance was given, that before any further demands should be made, a revision of the quotas of the states would be had.

By this scheme, the amount to be required was reduced to about four and a half millions. To give further facilities to the states, it was proposed, that one half of this sum should be called for in money; that the other moiety, being the interest on the domestic debt, should be met by discounts of interest with the domestic creditors, for which, transferable certificates were to be issued, receivable in lieu of money. A proposition of McHenry, to refer this report to the superintendent of finance, was negatived, and on a subsequent day, a motion was made by Jefferson to reduce the amount to be collected from three-fourths to *one half* of the original sum, which, though defeated on the first vote, prevailed after protracted and frequent debates.

This report was ultimately adopted; and although it had admitted that nearly five millions and a half were necessary for the current service, the amount required by it was reduced to a little more than two and a half millions of dollars, a measure that left a large sum of interest unprovided for, which was raised by the succeeding congress. This was a complex affair. By preventing collisions as to the respective quotas of the states, and by imposing upon a future congress the irksome office of demanding increased contributions, it was better adapted to secure a temporary popularity, and to subserve personal

objects, than to discharge the public engagements, or to promote the public welfare.*

The refusal to refer this report to the superintendent of finance, is indicative of the relations between that officer and this congress. He soon after resigned his office, and his powers were consigned to a new board of treasury.

While this subject had in part occupied their attention, a plan† was discussed for the government of the western territory, and principles were established on which, when sufficiently peopled, it should be formed into subdivisions, to be admitted as members of the confederacy. The re-

* In a letter from Rufus King, a delegate in the succeeding congress, to Gerry, it is observed: "The recommendation of the twenty-seventh April, seventeen hundred and eighty-four, is the source of great embarrassment. Congress thereby declare, that they will not call for further moneys until the states have all paid up former deficiencies; and they engage to credit advances over the moiety of the eight millions of dollars in the next requisition. The recommendation of last year, which is a very complex affair, also states, that before the residue of the eight and two millions of dollars, not thereby called for, should be required, congress would revise the rule of apportionment, and make it conformable to justice, upon the best evidence in their power at the time. South Carolina, in the apportionment of the eight millions, stands at the same sum as New-Hampshire. Revise the rule, and conform it to justice, and South Carolina will stand at a larger sum, and other states at a less. This is what I contend for; and if it succeeds, we shall bring in South Carolina. Indeed, it may be questionable whether we ought not to reconsider the recommendation of last year on this subject, and to enjoin it upon the states to comply with the expectations of congress, in paying a moiety of the quotas of the eight millions last year required, and make a new requisition for the moneys necessary for the present year, without reference to former requisitions. It will be the occasion of confusion and intricacy, if every new requisition upon the states for money is to operate as a *balance-bill* to all preceding demands."

† Jefferson's plan, dated March 1st, 1784, proposed that each state should comprehend two degrees of latitude, divided by north and south parallels, and that they should be named Sylvania, Michigania, Chersonesus, Assinipia, Metropotamia, Illinoia, Saratoga, Washington, Polypotamia, Pelisipia, and should become states as soon as each contained 40,000 souls.

port was from Jefferson, Chase, and Howell. It is to be remarked, that it embodied a proviso for the exclusion of slavery in the contemplated states, after the commencement of the nineteenth century, which, though sustained by the votes of all (but the southern states,) and by those of Jefferson and Williamson, was expunged.* This report is a remarkable event in the history of its author. It contemplated an exercise of the highest powers of government; nothing less than the creation of independent states; their admission as members of the confederacy, and the determination of the conditions of such admission. But it was an exercise of powers not delegated to the confederation! "All this was done without the *least colour* of constitutional authority; yet no blame was whispered, no alarm sounded. The public interest, the necessity of the case, *imposed* upon Congress the task of overleaping their constitutional authority."†

The cession by Virginia of the vast territory she claimed as her own, questionable as was her claim, is seen to have been a matter of highest interest to all but the three most southern states. New England looked to it as the region where her industrious population would find an ample home with their spires and their school-houses amid its open glades and mighty forest wilds. New York saw the importance of adjusting the great question of territorial rights; and all the states, Virginia excepted, regarded it as "a common fund" to discharge the debts and to provide for the necessities of the confederacy. Maryland is seen to have withheld her assent to the articles of confederation, waiting, insisting, on this cession.

* The expunging vote was on the 19th of April, 1784.—Journal, iv., 373.

† Such was the charge, and such the defence.—Federalist, No. 38, by Madison.

Thus Jefferson, in the act of executing this grant, could not have performed a more grateful office.

The plan, reported by him, for the government of the ceded territory, ere long repealed because of its inconvenience,* in the exclusion of slavery, is seen, by the vote, to have had a large acceptance,—while the proposed reduction of the demands of the Treasury, fallacious as it was, was welcome to men, blind to, or paltering with their duty.

In public affairs nothing is more replete with danger than a want of decision; and no maxim is more frequently present in the history of the United States than that briefly uttered by Hamilton,—"Decision is true wisdom."

The proceedings stated were all of a sort to smooth the way to the gratification of Jefferson's chief desire.

The events of the last year had shown that every effort to conclude a commercial treaty with Great Britain, had been vain, and if France could have been previously induced to adopt a more liberal policy, the negotiations for the treaty of peace had dispelled every hope of that kind. The previous Congress had, in conformity with Hamilton's views, dissuaded a multiplication of pacts with foreign nations, until the confederacy should have been invested with an efficient control over its members, and until time and experience should have indicated what system of regulations would best promote the permanent interests of the United States. But the recent overtures were to be met, and when the field of ambition was so circumscribed at home, nothing could be more attractive than the position of determining the foreign relations of this youthful empire; nor more enchanting to a visionary mind, than the attempt to overturn at once the prevailing maxims of European diplomacy, and to substitute an universal system of

* Curtis, ii., 844.

free trade. The mode adopted to obtain this object was as certain to result in failure, as the object was at that time hopeless. It was a novel idea, and had an imposing air, to establish a central commission at Paris, whither the nations of Europe might resort, to ask a participation in the commerce of the new world. Should the dignity of Britain scorn, or the pride of Spain revolt at the idea of negotiating under the supervision of France, yet still it would be a happy thing to escape the turmoils of a jarring confederacy, to withdraw from the sufferings of a recent war, and to enjoy the only official emoluments, ease and honour, which the penury of the people could support. To others, was left the labour of building up the constitution of the country.

Jefferson introduced a report on the foreign relations. After reciting the advantages to be derived from treaties with the various nations of Europe, he proposed that each treaty should contain a stipulation that each party should have the right to carry their own produce, manufactures, and merchandise, in their own bottoms to the ports of the other, and thence to take the produce and manufactures of the other, paying such duties only as are paid by the most favoured nation,—freely, where freely granted to such nation, and paying the compensation where such nation does the same. "That with nations holding possessions in America, a direct and similar intercourse be admitted between the United States and such possessions; or if that could not be obtained, a direct and similar intercourse between the United States and certain free ports within such possessions. If neither of these—permission to bring, in their own bottoms, their produce and merchandise to the United States directly, and similar permission to the United States as to their produce and vessels; or else, a permission to the inhabitants of such possessions to carry their produce and merchandise

in their own bottoms to the free ports of other nations; and thence to take back, directly, the produce and merchandise of the United States; and that in all such treaties, the United States should be regarded as one nation, upon the principles of the federal constitution." Provisions that free ships should make free goods, defining articles of contraband and the state of blockade, were also to be made; with the additional stipulation, that a contraband trade should not induce confiscation.

Security was also to be assured to persons following the peaceful arts; and a stipulation that private ships should continue their trade free and unmolested during war, and that privateers should not be employed, was proposed. Aliens were to be excluded holding real estate within the United States, as "utterly inadmissible by their several laws and policy;" but in case they did, it was not on their demise to escheat, but might be sold for the benefit of their representatives. All treaties were to be limited to ten years, unless the foreign party "pertinaciously insisted" on their being extended to fifteen years. On the discussion of the leading principles of these instructions, placing each nation on the footing of the most favoured, a substitute was offered to establish the intercourse on the basis of "natives;" but if this could not be obtained, then on that of "the most favoured nation." This amendment was lost on the vote by states, though of the members present, a majority were in favour of it.* It was also contended that a distinction ought to be made between British and American vessels by a difference of duties. If not then made, that it was at least important to reserve the power of making such a discrimination in case, pecu-

* Affirmative—Massachusetts, Connecticut, Pennsylvania, Maryland, Virginia, (three to two,) Jefferson and Monroe in the negative. Negative—New-Hampshire and New-Jersey. Divided—Rhode Island, New-York, North and South Carolina.

liar circumstances should render its exercise necessary Owing to these differences of opinion, it was moved to postpone acting upon this report until the disposition and concurrence of the several state legislatures should be ascertained, which, the motion stated, "the constitution renders highly prudent, if not indispensably necessary in forming commercial treaties."

With this motion a resolution was offered directing foreign powers to be apprised of the desire of the United States "to form treaties upon terms of perfect reciprocity and equality; and for that purpose, were ready to enter into negotiations in *America*.". Five commissioners had been appointed to negotiate the treaty with England, thus representing each important section of the union. To gain the benefit of this precedent, it had been proposed to appoint two additional commissioners. One of the objects of this resolution was, to prevent so unnecessary an increase of the number of foreign ministers. But it was defeated, and the report of Jefferson was recommitted. Another report had recently been made proposing a reduction of the civil list. It was next moved to postpone these appointments for the purpose of considering this report. The division of states being equal, this motion was also lost.* The idea of two additional commissioners was then abandoned, and it was moved to add one to the existing number.

This proposal was resisted, and in lieu of it a declaratory resolution was offered, "that the interests of the United States do not require more than three commissioners plenipotentiary to be supported in Europe to negotiate treaties of commerce." This declaration would have defeated Jefferson, and at the instance of Virginia it was superseded by the previous question. A debate next arose

* 4 J. C. 396-7.

on a proposal to reduce the salaries of these ministers,* which prevailed. To prevent this reduction, a member from Virginia insisted that it was a proposition which required the assent of nine states. This extraordinary objection was defeated, only five members voting for it; but the next day, at the instance of Gerry, the salary was established at nine thousand dollars.

Jefferson had recommended a delusive provision for the public creditors, and had urged "forbearance," on the ground "that the states were just relieved from the ravages of predatory armies, returning from an attendance in camps to the culture of their fields; beginning to sow, but not yet having reaped; exhausted of necessaries and habitual comforts, and therefore needing new supplies out of the first proceeds of their labour." He was also of the committee which had recommended retrenchments in the public expenditure, and which did not contemplate in their report this additional officer.

Under these circumstances, the appointment of an unnecessary commissioner was viewed as proceeding solely from a desire to bestow office on an individual, by a body of which he was a member, without any regard to the condition of the country. It gave rise to much dissatisfaction. At this moment a letter was received from Franklin, announcing that Jay had determined to embark for America. The motive to an increase of the number of the commission now ceased, and the measure was abandoned.

The office of secretary of foreign affairs was vacant. Jay, in his late mission, had confirmed the confidence of the nation. His appointment to that department would satisfy the public, and propitiate those who were offended with this gross and glaring effort to provide for a favour-

* From $11,000 to $8,000.

ite. The dissatisfaction given by Jay to the partisans of France was therefore smothered, and yielded to the present object; and on the same day, the seventh of May, Jay in his absence, at the instance of Gerry, was elected to the foreign department; and with his concurrence, Jefferson, on the motion of a colleague from Virginia, was chosen to fill the vacancy in the commission.

An occurrence of this kind could not fail to produce a strong and lasting impression. A twelvemonth after, Massachusetts urged, through her delegates, a resolution that no member of congress should be appointed to any office during the term for which he was elected; and a provision was inserted in the federal constitution, which would seem to have had this case in view. It rendered a member of congress ineligible "to any civil office that had *been created*, or the *emolument* whereof had been *increased*, during the time for which he was elected."

Jefferson's commercial report was now again brought forward with some additions. Of these, the most important was, that these instructions should be considered as supplementary to those of October, seventeen hundred and eighty-three; that where the commissioners should be able to form treaties on principles in their judgment more advantageous to the United States than those of the report, they were permitted to adopt such principles, and that it would be agreeable to have supplementary treaties with France, Holland, and Sweden, which may bring the treaties previously entered into, as nearly as may be to the principles now directed.

Numerous exceptions were taken to a treaty framed on the principle of these instructions, in a report* subsequently made to congress by the secretary of foreign affairs. These are to be regarded, not as exceptions to stipulations

* Report of Jay.—2 D. C. 234.

of the most perfect equality and reciprocity in a particular treaty with any one nation, where the interest of the country might dictate them, but as exceptions to the establishment, at that time, of a general system of policy, excluding all discriminations or prohibitions, however their necessity might be indicated by peculiar circumstances. Jay thought that a system for regulating the trade of the United States should be framed and adopted before they entered into further treaties of commerce. Various reasons were given to show that it was inexpedient to make the conduct of the parties towards the most favoured nations, the rule of their conduct towards each other; among these, a principal one was, that the interchange of favours between the United States and a nation merely *European*, would probably be regulated by principles and considerations distinct, in a certain degree, from those which should regulate such an interchange between them and nations partly European and partly American.* There might, he said, exist reasons for freely granting to one nation what there might be no reason for granting to another. He also doubted the expediency of agreeing absolutely that any nation should be at liberty to bring and vend into the United States, all or any of their productions and manufactures *without exception*, because it might be necessary to prohibit the importation of some of them, either to check luxury, or to promote domestic manufactures.†

* "We abstained," Jefferson observed, "from making new propositions to others having no colonies, because our commerce being an exchange of raw for wrought materials, is a competent price for admission into the colonies of those possessing them; but were we to give it without price to others, all would claim it without price, on the ordinary ground of gentis amicissimæ."—Jefferson's Works, vol. 1, p. 51.

† In the treaty which was the immediate subject of this report, one article precluded the laying an embargo. This was objected to, for a reason not easily disputed.

But one other topic of moment arrests attention in the proceedings of this congress. It related to the garrisoning of the frontier posts. The hostility evinced by New-York to the employment of continental troops for that purpose, has been previously mentioned. The expectation that the negotiation which was pending for the surrender of those posts would be successful, produced great anxiety in the councils of that state, and she urged, with extreme earnestness and pertinacity, a declaration by congress, in pursuance of the articles of confederation, of the number of troops necessary to be kept up by her for the protection of her frontier. This subject, though frequently presented to that body, was deferred from an apprehension of authorizing an individual state to maintain an armed force. To avoid this alternative, propositions were made in congress for the enlistment of a thousand men, to protect the commissioners recently appointed to hold treaties with the Indians, and to defend the frontiers.

The fate of these propositions is indicative of the temper of the times. After repeated and laboured debates, a resolution was introduced by Gerry, proclaiming "the danger of confiding to a body, which was already empowered to make foreign and domestic loans, and to issue bills of credit, that of raising standing armies;" and it was determined to discharge the few troops which had been retained in the service of the United States. The standing army was reduced to eighty men. No officer was retained of a higher rank than captain, and the western frontiers were to be protected by a requisition for a regiment of militia. The congress of the United States having, in virtue of the confederation, at the instance of Jefferson, chosen from its own body a "committee of the states," now adjourned.

This committee continued in session, though without effecting any thing, until the nineteenth of August, seven-

teen hundred and eighty-four, when some of the members withdrawing, without the consent of their colleagues, it broke up, without the decency of an adjournment, in clamorous confusion, leaving the nation without any representative council.

The congressional year of their successors commenced on the first of November, of the same year, but a quorum was not formed until the succeeding month. Its history is alike barren of interest; the few subjects upon which it acted, until the latter part of its session, being the organization of a court to adjudicate upon the territorial controversy which existed between the states of Massachusetts and New-York; measures for the adjustment of a similar dispute between South Carolina and Georgia; the appointment of commissioners to treat with the southwestern tribes of Indians; the selection of a site for a federal city, and an ordinance defining the power and duties of the secretary at war. These being arranged, a decision was made upon a matter of permanent importance—the mode of disposing of the western territory. Much discussion on this subject had occurred during the previous congress. An ordinance was now passed, "the result of compromise, not such as was desired, produced by the utmost efforts of public argument and private *solicitation.*"*

A provision for the current service gave rise also to frequent deliberations, which were concluded by a vote on the report of the grand committee of congress, a short time before the termination of its political existence. By this vote a requisition was made upon the states for three millions of dollars, of which two-thirds were receivable in

* From a letter of William S. Johnson, a man of a probity and talent as eminent, and views as comprehensive, as were those of his distinguished father.

certificates for interest on the liquidated debts; which amount was intended not only to meet the demands of the year, but also the balance of the estimate which the preceding congress had omitted to require. An earnest recommendation was made for the completion of the measures for raising revenue, proposed in the spring of the preceding year, as preferable to any other system, "and necessary to the establishment of the public credit."

CHAPTER XL.

From the Congress, to which he was indebted for his preferment, and of which he does not disguise his contempt, —"little numerous, but very contentious"—Jefferson hastened away. Appointed envoy, on the motion of a colleague from Virginia, seconded by Gerry, on the seventh of May, he left his seat four days after, and though the session continued near a month, did not resume it, but sailed for Paris, on a summer sea, intent upon his project "to emancipate commerce."

The joint commission was opened with much solemnity on the thirteenth of August, 1784, and, soon after, its powers were announced to the different governments of Europe—France, Great Britain, Denmark, Germany, Prussia, Sweden, Spain, Portugal, Russia, Saxony, the Sicilies, Sardinia, Tuscany, Genoa, Venice, Morocco, Algiers, Tripoli, Tunis, the Sublime Porte, and his holiness the Pope.

France received them with a smile; England silenced the experiment by an inquiry as to the "real nature of the powers with which they were invested, whether they were *merely* commissioned by congress, or had received separate powers from the respective states." The other nations stood aloof. Prussia alone formed a treaty embracing some of the principles of the report, but insisted upon reserving the right of prohibition and retaliation—rights which the American commissioners themselves claimed to reserve in their negotiations with Tuscany! The commission, thus baffled in all its expectations, ceased to act.

The introduction of a new power into the great family of nations, would seem to have been an event fraught with

the most important and immediate interest to the civilized world, and an American might have hoped to have seen her vast prospective greatness attracting the eyes of Europe, and commanding all its attention. But the impotence of the confederacy and the visionary objects of this commission defeated those hopes. From these causes a larger view of our foreign relations would seem unnecessary, were it not for the powerful influence which the policy of the great leading powers produced on the social condition of the American states.

Those with France, their ancient ally, first attract attention. Nothing is more obvious in all her policy than the sagacity of her statesmen, who foresaw that the moment her political influence over the confederacy ceased, every other connection would become a minor consideration. Hence her solicitude that all the American negotiations should be conducted near her court. But England and Spain were both unwilling that Paris should be the centre of political action. Great Britain insisted, as a previous condition to any negotiation, an embassy to London, "as more suitable to the dignity of either power." The Spanish minister declared, that in matters between its crown and any other power, "the custom of its court (the most regular and systematic of all others) was to negotiate between themselves, without availing themselves of a third place." Franklin having resigned his seat in the commission, Adams, in consequence of these intimations, was accredited to the court of St. James; Jefferson to that of Versailles; and Spain appointed a sort of intermediate minister—a "plenipotentiary chargé d'affaires," to reside at the seat of congress. Jefferson's object was attained.

While the force of habit formed during her colonial relations, similarity of language, laws, and manners, all

attracted the American people to England, other causes operated as insuperable obstacles to an extensive commerce between the United States and France.

The poverty of the American people denied to them the luxuries of their ally. The inferior fabric and peculiar fashion of articles of primary necessity, prevented their being introduced into general use. For those which were sought, few American products would be received in exchange; while the commercial system of France, yet in its infancy, charged the objects of commerce with such a multiplicity of duties, and those so oppressive, as to deter enterprise. The principal article of exchange was the subject of a monopoly, and charged with a duty to the crown, of too much value to be relinquished by a needy monarch. On other articles accumulated duties were levied, and these were partitioned among so many recipients, as placed it beyond the power of the financier to reduce them to one denomination; while the political influence of the beneficiaries would not permit them to be diminished or suppressed. These were some of the embarrassments to a direct trade. The colonial trade had been long conducted under a most rigid system, and as the treaty of seventeen hundred and seventy-eight had secured to France the free admission of her manufactures into the United States, they had nothing to offer in the shape of immunities to open the sealed commerce of her islands.*

Soon after his return to Europe, La Fayette, at whose

* Compelled by necessity, France opened her colonial ports during the war, but at its close, by an arrêt, dated thirtieth of August, seventeen hundred and eighty-four, she permitted the importation into them only of a few articles of primary necessity, and confined the exports to rum, molasses, and goods brought from France, which paid the local duties with an ad valorem of one per cent. A discriminating duty was also imposed on salted beef and dried fish, to form a fund for the encouragement of the French fisheries.

instance, the free ports stipulated in the treaty of seventeen hundred and seventy-eight were designated, made strong representations to his court of the benefits to be anticipated from enlarging the commercial intercourse of the two countries. The representations were renewed by Jefferson often and with much detail, but the progress of the negotiation was slow—indicative of the altered temper of Vergennes, from his failure to control the definitive treaty with England—and attended with circumstances not a little wounding to American pride.

The first letter addressed to that minister received no other answer than that it had been transmitted to the comptroller-general. To subsequent communications it was replied, "that not a sufficient dependence could be placed on arrangements taken with us;" and an act of one of the states, by which a discrimination of duties was made between natives and foreigners, became the subject of a letter from the premier, which, after reproaching the American minister with a disregard of reciprocity in our navigation laws and commercial regulations, closed with a threat, "that the king will be under the necessity, contrary to his wishes, to fall upon such means as will tend to put matters upon a perfect equality."*

These complaints were referred to the secretary of foreign affairs, whose report admitted that the French merchants enjoyed fewer privileges than the merchants of the United States did in France, and that the act of Massachusetts "had deviated both from the letter and spirit of the treaty."† While the impotence of the confederation thus subjected it to the just reproach of a breach of faith towards their ally, it also gave rise to reclamations for individual claims, the justice whereof could not be denied, and which there were no means to discharge. The disappoint-

* 2 D. C. 488. † 1 D. C. 243.

ments that followed produced great irritation among the French residents in the United States, which extended to her legation, and drew from them remonstrances, wherein the respect due to an independent government was often forgotten.

In vain did congress renew their assurances of eventual payment, founded on the good faith of the states. Discriminations in the provision for the interest on their debts, from which provision foreigners were expressly excluded by some of the states, were pointed out, and the very ground on which the delay of justice was excused, the inability to compel the collection of taxes, gave rise to the taunting inquiry, "Is there one, or are there eleven republics?"

It being a leading maxim in Jefferson's politics "to multiply the points of contact and connection" with France, it will be seen, that he used every means to promote intercourse with a people whose habits, manners, tastes, and morals he decried, yet admired, and copied.

The insufficient provision for the interest and instalments then due of the debt to France, led to a proposition to purchase it. The terms of this proposition are found in the secret journal of congress of the second of October, seventeen hundred and eighty-seven, giving an extract of a letter from Jefferson to the secretary of foreign affairs:— "That a proposition has been made to Monsieur de Calonne, minister of the finances of France, by a company of Dutch merchants, to purchase the debt due from the United States to the crown of France; giving for the said debt, amounting to twenty-four millions of livres, the sum of twenty millions of livres. That information of this proposition has been given to him by the agent of the said company, with the view of ascertaining whether the proposed negotiation would be agreeable to congress. That the said minister suggests, '*that if there is a danger*

of the public payments not being punctual, whether it might not be better that the discontents which would then arise, should be transferred from a court of whose good-will we have so much need, to the breasts of a private company.' That the credit of the United States is sound in Holland; and that it would probably not be difficult to borrow in that country the whole sum of money due to the court of France, and to discharge that debt without any deduction; thereby doing what would be grateful to the court, and *establishing with them a confidence in our honour.*"*

This subject was resumed in a letter from Jefferson to Jay of the twelfth of November following.† He wrote: "In a letter which I had the honour of writing you on the twenty-sixth December, I informed you that a Dutch company were making propositions to the minister of France here, to purchase at a discount the debt due from the United States to this country. I have lately procured a copy of their memoir, which I now enclose. Should congress think this subject worthy their attention, they have no time to lose, as the *necessities* of the minister, which *alone* have made him to listen to this proposition, may *force* him to a speedy conclusion."

The former of these letters was referred to the board of Treasury, who on the second of October of the following year made a report; which, after reciting the previous extracts of the letter of Jefferson, contains comments full of meaning:—

"That at the time the debt due from the United States to the crown of France was contracted, it could not have been foreseen that the different members of the union would have hesitated to make effectual provision for the discharge of the same, since it had been contracted for the security of the lives, liberties, and property of their

* 4 S. J. 386. † 3 D. C. 175.

several citizens, who had solemnly pledged themselves for its redemption; and that, therefore, the honour of the United States cannot be impeached, for having authorized their minister at the court of France to enter into a formal convention, acknowledging the amount of the said debt, and stipulating for the reimbursement of the principal and interest due thereon.

"That should the United States at this period give any sanction to the transfer of this debt, or attempt to make a loan in Holland for the discharge of the same, the persons interested in the transfer, or in the loan, would have reason to presume that the United States in congress would make effectual provision for the punctual payment of the principal and interest.

"That the prospect of such provision being made within a short period, is by no means flattering; and though the credit of the United States is still sound in Holland, from the exertions which have been made to discharge the interest due to the subscribers to the loans in that country, yet, in the opinion of this board, it would be *unjust* as well as *impolitic*, to give any public sanction to the proposed negotiation. Unjust, because the nation would contract an engagement without any well-grounded expectation of discharging it with proper punctuality. Impolitic, because a failure in the payment of interest accruing from this negotiation (which would inevitably happen) would justly blast all hopes of credit with the citizens of the United Netherlands, when the exigencies of the union might render new loans indispensably necessary.

"The board beg leave further to observe, that although a grateful sense of the services rendered by the court of France, would undoubtedly induce the United States in congress to make every possible exertion for the reimbursement of the moneys advanced by his most christian majesty, yet, that they cannot presume that it would tend

to establish in the mind of the French court *an idea of the national honour of this country*, to *involve individuals in a heavy loan*, at a time when congress were fully sensible that their *resources were altogether inadequate to discharge even the interest of the same*,* much less the instalments of the principal, which would from time to time become due. *How far the idea of transferring the discontents which may prevail in the French court*, for the want of the punctual payment of interest, *to the breast of the private citizens of Holland*, would be consistent with sound policy, the board forbear to enlarge on.

"It may be proper, however, to observe, that the public integrity of a nation is the best shield of defence against any calamities to which, in the course of human events, she may find herself exposed.

"This principle, so far as it respects the conduct of the United States in contracting the loans with France, cannot be called in question. The reverse would be the case, should the sanction of the United States be given either to the transfer of the French debt, or to the negotiation of a loan in Holland for the purpose of discharging it.

"If it be further considered, that the consequences of a failure in the punctual payment of interest on the moneys borrowed by the United States, can by no means be so distressing to a nation, (and one powerful in resources,) as it would be to individuals, whose dependence for support is frequently on the interest of the moneys loaned, the board presume that the proposed negotiation cannot be considered at the present juncture, in any point of view, either as eligible or proper. Under these circumstances,

* Jefferson wrote to Carmichael at Madrid, June 14, 1787:—"New-York still refuses to pass the impost in any form, and were she to pass it, Pennsylvania will not uncouple it from the supplementary funds. These two states and Virginia, are the *only ones*, my letters say, *which have paid any thing* into the continental treasury for a twelvemonth past."

they submit it as their opinion, "that it would be proper without delay to instruct the minister of the United States at the court of France,* not to give any sanction to any negotiation which may be proposed for transferring the debt due from the United States, to any state, or company of individuals, who may be disposed to purchase the same."

So jealous were congress of the injury which this proposition might inflict on the national character, that on the day on which this report is dated, they instantly passed an act instructing Jefferson not to promote any negotiation for transferring the debt due to France from the United States.† Could he have incurred a severer censure?

Thus the national honour was saved, but the lure had succeeded. In prosecution of the project, a letter was addressed by Jefferson to Dumas,‡ to ascertain its practicability; whose reply evinced a preference of a purchase for a sum less than its face, to a loan for the whole amount, and urged prompt action, stating that "the *sacrifice* on the part of France, would be very *small*. An arret was accordingly framed and submitted to Calonne. That minister, grasping at such a prospect of relief from his financial difficulties, soon after this purchase was suggested, addressed a letter to Jefferson, giving the assurance that the monopolies on particular articles would not be renewed, and that the duties on most of the imports, the growth of the United States, in French or American vessels, were "suppressed."§ The execution of this arrangement was,

* 3 D. C. 183. † 3 D. C. 289.

‡ Dumas had a pension from France, revertible to his daughter.

§ 3 Dip. Cor. 163.—Oct. 22, 1786.—This letter also states, that as Virginia had ordered arms for her militia from France, the duties and prohibition of them should be abolished. Similar supplies had been furnished by France to her during the war, which gave rise to questions in the settlement of the accounts. A more serious difficulty grew out of an act of that state, passed pending Jefferson's negotiation about the debt, giving a preference to French

however, suspended, not improbably in consequence of the rejection by congress of the proposed transfer of the debt. But the disturbances in Holland, and the hostile appearances in Europe, notwithstanding a temporary pacification, ultimately induced the issuing of arrets, enlarging in some particulars, and abridging in others, the former arrangement.

One topic of discussion yet remained. It has been previously mentioned that the treaty with France provided for the mutual appointment of consuls, under a convention to be framed between the respective governments. This subject was not acted upon until July, seventeen hundred and eighty-one; immediately after the resolutions, submitting the terms of a treaty with Great Britain, had been passed. A memoir was at that time presented by La Luzerne, containing a draft of a consular convention, prepared at Paris.

It was in its essential features approved by congress the following January, with one material difference. The French plan proposed the presentation, by their consuls, of their commissions to the respective states, which were to grant them their exequaturs. The American draft required that the consuls should, "in the *first instance*," present their commissions to congress, to be recognised by them by a public act, and then to have validity in the states. This plan was sent to Franklin, with instructions to exercise his discretion as to the words or arrangement of it, but to confine himself in all important respects to its substance.

brandies. The minister of the Netherlands presented a remonstrance against this preference, as a breach of treaty. In this treaty, Adams had omitted an important provision, securing *compensation* for privileges; but the United States considered this as a gratuitous favour. The injury was acknowledged, and resolutions were adopted by congress, urging Virginia to repeal the act, founded on a report from the department of foreign affairs, censuring the granting of favours *by any state*.—4 S. J. 401.

A convention was entered into by him, and was submitted to congress in seventeen hundred and eighty-four; France having in the mean time appointed Marbois consul-general, with a subordinate corps of consuls and vice-consuls. On the consideration of this convention, congress, at the instance of Jay, unanimously resolved, that instructions should be given that the signature of the convention should be delayed until further advices, unless it had been already signed. A despatch from Franklin announced that it had been already signed, and that a copy had been so long since transmitted to congress, that its ratification was expected; he added, "I am not informed what objection has arisen in congress to the plan sent me. *Mr. Jefferson thinks it may have been to that part which restrained the consuls from all concerns in commerce.*"* Congress had delayed to act upon it, until, a formal demand of its ratification being made by France, the convention was deliberately examined by the secretary of foreign affairs.

On this examination it appeared that it proposed three principal objects, in the promotion of which, it was manifest, that the United States had no interest.

The *first* was, a provision against the infraction of the French and American laws of trade. As the United States had no laws for the regulation of her commerce with France or her dominions, there could be no use in a provision against the infraction of them. The *second* was, a restriction of the emigration to the other, of the people of either country, which, as there was no reason to apprehend emigration from the United States to France, was superfluous. The *third*, established a corps of "consuls, vice-consuls, and agents," so coherent, so capable of acting jointly and secretly, and so ready to obey the order of their chief, that it could not fail of being influential in two

* 2 Dip. Cor. 44.

very important *political* respects—the acquisition and communication of intelligence, and the dissemination and impression of such advices, sentiments, and opinions, of men and measures, as it might be deemed expedient to diffuse and encourage." An arrangement, which, in France, "where nothing could be printed without being licensed, or said without being known, and, if disliked, followed with inconvenience, and where the people being perfectly unimportant, every measure to influence their opinions must be equally so, could be of no use to America," but which in the United States would be most dangerous to her institutions.

The powers and immunities with which this corps was clothed, were equally objectionable. By one article, certified declarations made before the consuls, were to be received in evidence as conclusive. By another, the consuls were invested with jurisdiction over all offences in which the citizens of the respective countries were parties, to the exclusion of the civil tribunals constitutionally created, while full immunity was conferred on their persons, papers, houses, and dependants. Consular chanceries were also created, which in many respects clashed with the internal policy of the United States, and a complete jurisdiction was given over French vessels in American harbours. It is also not a little remarkable, that the original feature in the French plan, which directed the commissions to be presented on their arrival to the respective states, according to the forms established there, was retained, notwithstanding the express instruction to follow the plan of congress, which directed these commissions, "in the first instance" to be presented to them. This, connected with the suggestion of Vergennes to Adams, that each state should appoint its own ministers, combined with the other circumstances of a direct loan being made by France to Virginia, and a commercial exemption being obtained from

her, leaves a strong implication that France had in view relations with the individual states, independent of congress, and in direct violation of the articles of confederation, and that Jefferson was not insensible of the advantages Virginia might derive from these dispositions. The position of the United States was not a little embarrassing. The scheme having been framed by a former legislature, was conclusive upon the country, and its execution was urgently pressed by the French chargé d'affaires.

As the only alternative, instructions were transmitted to Jefferson to state the objections to the present form, and to give assurances of their readiness to ratify a convention agreeable to the scheme originally framed, on the condition of its being limited to eight or ten years, instead of its being perpetual, as was first agreed. After much negotiation, a convention liable to fewer objections than that signed by Franklin, was concluded in seventeen hundred and eighty-eight; and after an inquiry how far it was obligatory upon the country, was ratified from necessity by the present government.

The fruitless efforts made by the Spanish resident at Paris to induce Jay to enter into a treaty, the basis of which was a sacrifice of a large part of the undoubted territory of the United States, and, as a consequence of such sacrifice, the total abandonment of the Mississippi, have been the subject of previous comment.

On the third of June, seventeen hundred and eighty-four, a few days after Jay had been elected secretary of foreign affairs, and Jefferson chosen commissioner in his place, it was thought advisable to renew the instructions of seventeen hundred and eighty-two; and a resolution, moved by Nathan Dane, of Massachusetts, passed, directing the American commissioners "not to relinquish or cede, in any event, the right of the citizens of the United States to the free navigation of the Mississippi from its source to the ocean."

It has been seen that, notwithstanding the recent negotiation with Jay at Paris, the commissioners, or some of them, were required to repair to Madrid. This was not acceded to, and Spain, sensible of her error, sought to remove the prejudices of the United States by a course of conciliation. She mediated a peace between them and the emperor of Morocco, on terms favourable to the former. She released a number of Americans, who had been imprisoned at Havana for breaches of her navigation laws; and she commissioned Gardoqui, a partner of a commercial house at Bilboa, who had been the medium of aids from Spain at an early period of the revolution, to negotiate a treaty. He arrived in seventeen hundred and eighty-five, when the secretary of foreign affairs was authorized to treat with him.

The point upon which the former negotiation had broken off, still remained an insuperable obstacle. While Spain offered to treat on terms, in other respects deemed by Jay of the greatest advantage, she still insisted upon the retention of the territory east of the Mississippi, and consequently upon the exclusion of our citizens from its navigation. Late in the preceding year she had caused it to be announced to the United States, that vessels trading through that river would be exposed to process and confiscation. The obstruction of them, by her garrison at Natchez, was indicative of her determination to enforce her pretensions. The question now assumed a new aspect. The navigation could not be permanently relinquished. To submit to the enforcement of her restrictions, while their justice was denied, would be humiliation; to resist by arms, was war.

Influenced by this state of things, by his impression of the other advantages of the treaty, and by the consideration that Spain was in possession of posts on both branches of the river, rather than the United States, without money without credit, and without an army, should be plunged

into a war, "with very little prospect of terminating it by a peace, either advantageous or glorious," the American secretary attended congress, and enforced* the propriety of a treaty, limited to twenty-five or thirty years; one of the articles of which would have stipulated the forbearance of our citizens to use its navigation below their own territories to the ocean for a like term. This proposition gave great offence. The delegates from the northern states approving it, while those of the southern condemned it. A motion was made to revoke his commission, which was defeated; and a resolution was introduced, repealing the instruction to stipulate the free navigation of the Mississippi to the ocean, consenting to a modified use of it,† but with a proviso to insist upon the territorial limits fixed by the definitive treaty with Great Britain. A strong remonstrance was made by the delegates of Virginia, in which, not merely these questions, but the whole plan of the treaty, was objected to.‡

Jay's plan proposed to give to the *merchants, vessels, productions, and manufactures* of each country, the same privileges as if they were those of the country itself. It was urged that as Spain made no discrimination in her ports between her *merchants* and those of other nations, by this article the United States relinquished the right of making any discrimination, however beneficial it might be to her, without any consideration. As to the *vessels*, it was objected that as Spain admitted those of all coun-

* 6 D.C. 165.—August 3d, 1786.

† These modifications were, permission to land and store American productions at New-Orleans; an advalorem duty to be paid to Spain on all shipments thence by American citizens; permission to our merchants to reside there; a privilege to American vessels to return from its mouth to that port, but not to carry any goods, contrary to the regulations of Spain, under pain of confiscation.

‡ 4 S. J. 87.

tries, even in the carriage of her own productions, "the United States bound themselves up again without a valuable consideration." As to *productions*, by the policy of Spain we now enjoyed the free admission of them; nothing therefore could be gained to us in this respect; and when our "commerce is subjected to the most severe restrictions in almost every foreign port—fish being excluded by France and Britain—the Mediterranean shut against us—the West Indies occluded almost altogether—the wheat and rice trade thus greatly injured—tobacco in France a monopoly, in Spain contraband—one would suppose it the duty of every wise American statesman to secure our rights and interests at home—to give in our own ports to our own citizens exclusive privileges; but of this advantage the project would deprive them." This proposed stipulation was objected to on other grounds. It would be contrary to the policy of the British navigation act, "by the wisdom of which, and of her other regulations in commerce, it was stated, Britain had attained to such a height of power and grandeur on the seas as to be at the same time the terror and the admiration of the world;" and yet of the benefits of such a policy and making such discriminations this project would deprive us. As to *manufactures*, it was urged that the right of prohibition or restriction on exports or imports was given up. This was without a precedent, unless it was the "family compact," which proved inconvenient and was annulled; independent nations having always retained the right of regulating their own interior police, and thus of securing reciprocity; a right, the exercise of which would be subservient to various purposes—the promotion of virtue and frugality, by the prohibition of foreign luxuries—the encouragement of manufactures and of the mechanical arts, by the prohibition of imports. The treaties with France and other powers stipulated to each the right of the most favoured nations. These nations

coming into the terms of Spain, in doing which they will give up nothing, will be entitled to these benefits; "the evils of this project will be therefore almost universal, and of course without remedy." The surrender or forbearance of the use of the Mississippi was objected to as inconsistent with the compact with Virginia as to the western territory. And it was also contended that its effect would be to dismember the government by a treaty of commerce, which could not be done under a limited power to treat.

It would be difficult to select an instance in which the United States had less motive to reserve or to exert the power of discrimination or prohibition. As to *vessels*, from the course of the trade, the cargoes and the superior economy of American navigation, a successful competition on the part of Spain was hopeless. How the policy of the British navigation act could, under such circumstances, the United States being the carriers, have been advantageously adopted, it is not easy to suppose. As to *productions*, the only object of Spanish traffic the importation of which this country has found it expedient to prohibit, is that of slaves. As to *manufactures*, those of Spain have never sought the American market.

But it was urged, if the commerce with Spain should be placed on the footing of natives, that France and Sweden would in virtue of their treaties be entitled to the same terms, only by reciprocating to the United States the same privilege. Was this an evil to be deprecated?

It cannot escape observation how entirely the principles of this report are at variance with the instructions proposed by Jefferson. Its details have been given chiefly to show how great and rapid had been the change of opinion as to the commercial policy of this country, two years only having elapsed since the approval of those instructions by congress. That Virginia should have been the first state since the peace to have proposed, and the first

to have objected to a system of free trade, is only an instance of the error of applying rigidly general maxims of policy to the conduct of nations, without regard to the modifications circumstances may indicate. Nor will it fail to be remarked as additional evidence of the timid counsels by which that state had been governed, that though in seventeen hundred and eighty-one, her legislature had instructed Madison to authorize Jay to *cede* the right of navigating the Mississippi to Spain absolutely and for ever, she now declared that to consent to a *suspension* of that right would be "to dismember" the government.

The importance Spain attached to that right, is shown not only by her conduct during the war, but by the promptitude with which she opened a negotiation respecting it after the peace. Claiming the exclusive right, and denying the pretensions of this country, it was thought to be an important object attained if a treaty could be made which would imply that she accepted the use of the river as the lessee of the United states for a specified time, and thus virtually recognised the reversionary right to be in them; thereby terminating all questions of ownership.

Impelled by this strong motive, and little anticipating the rapid growth of the western territory, Jay considering that by this treaty the United States "gained much, and sacrificed or gave up nothing," continued his negotiation with the chargé of Spain. He fortunately refused "to admit the navigation of the Mississippi below their limits on any terms, nor would he consent to any article acknowledging their right in express terms, and stipulating to forbear the use of it for a given time," a difficulty that Jay supposed could be overcome by implication, in which idea Gardoqui concurred.

The vote prohibiting a surrender of the navigation of the Mississippi was a vote of nine states; that authorizing this compromise was given by seven states. The consti-

tutionality of this vote was denied by the southern states: and, as the division was geographical, gave rise to much excitement. On the part of the south, it was alleged that New-England was solely actuated by a desire to check the population of the west, and thus maintain her preponderance in the union. The eastern states having opposed the alienation or suspension of this right when the southern states were its advocates, repelled the charge, and urged that this temporary cession would fix the permanent right in favour of this country, and prevent a coalition then apprehended between Great Britain and Spain. A resolution passed directing Jay to report the state of the negotiation; and as soon as the disposition of congress to consent to a limited use of the navigation was disclosed, a wide alarm was spread along the western frontier, and mutual complaints of aggression by the borderers were heard. These complaints were referred to Jay, who having stated acts of hostility by both parties, and his conviction of the right of the United States to navigate that river from its source to the ocean, expressed the opinion that if interrupted by her "it will be proper to declare war against Spain."

In this state of the question Madison proposed to refer the consideration of the American grievances to a committee, but was unsuccessful. In the mean time the agents of France had manifested great solicitude. It was their wish* that the negotiation should be committed to Jefferson and transferred to Madrid. With this view Madison,

* March 19, 1787—Madison to Jefferson:—"I discover, through several channels, that it would be very grateful to the *French politicians here* to see our negotiations with Spain shifted into *your hands*, and carried on under the mediating auspices of their court."

April 15, 1787—Madison to Edmund Randolph:—"*We mean to propose* that Jefferson be sent under a special commission, to plead the cause of the Mississippi at Madrid."—Madison Papers, vol. 2, p. 625, 637.

on the eighteenth of April, proposed that a special commission should be issued to Jefferson to proceed to Madrid "to enter into commercial stipulations, and to make such representations and urge such negotiations as will be most likely to impress on Spain the friendly disposition of the United States, and to induce her to make such concessions touching the southern limits and their right to navigate the Mississippi below them, as might most effectually guard against a rupture of the subsisting harmony, and promote the mutual interests of the two nations." This proposal was referred to Jay; he had previously made a report showing the disposition of France to promote the views of Spain, and he now strongly dissuaded this measure. He stated that it was more *advantageous* and more *honourable* to negotiate at home; that this transfer would offend the Spanish chargé, who would confirm the suspicions which this measure might excite in his court of an intention to amuse her, a suspicion to which the language of this resolution, as it only empowered him to confer, but not to conclude a treaty,* would be too apt to give colour. Twelve months after, the excitement in the western region having increased by the extended rumour of a disposition to surrender this right, the delegates from North Carolina proposed a declaration by congress that the United States "have a clear, absolute, and *unalienable*" claim to it. Jay, to whom it was referred, reported that a declaration ought to be made that this rumour was not

* In this report, Jay observed in reference to the terms of this resolution: "Perhaps this may only be an inadvertent inaccuracy in the motion; if not, it gives much colour to the inferences above suggested."—4 S. J. 342. At the sitting of the Virginia convention, Monroe reproved the conduct of this negotiation. Madison replied:—"From the best information, it *never was* the sense of the people at large or the prevailing characters of the eastern states to *approve* of the measure."—2 Elliot's Debates, 262-3. But see Madison Papers, v. 2, p. 637, 642.

founded in fact; but objected to an assertion that the right was unalienable, lest it might exclude the possibility of such modifications as, without impairing it, might be advantageous to the country and satisfactory to its citizens. A new committee was then raised, of which Hamilton was chairman. He introduced resolutions, which were adopted,* that the reported purpose to surrender this right, not being founded in fact, the delegates be at liberty to communicate all such circumstances as may be necessary to contradict it and remove misconceptions: "That the free navigation of the river Mississippi is a clear and *essential* right of the United States, and that the same ought to be considered and *supported* as such."

The same disposition which had been evinced upon this question in seventeen hundred and eighty-two, continued to be manifested by Vergennes. In answer to an inquiry as to the extent of the guarantee in the treaty of alliance, he intimated that "our limits were not fixed;" and the French chargé d'affaires was selected by Spain to communicate to congress the menace of confiscation, previously mentioned, if their vessels continued to commerce on the Mississippi.

The jealousies to which this negotiation gave rise, were fanned by the partisans of France, and were among the means of exciting hostility against some of the most prominent friends of the federal constitution.

The relations with Great Britain still more exhibit the *disunion* and impotence of this assemblage of states.

As soon as her restrictive proclamations were known, a general shock was felt throughout the confederacy. Commerce was thrown out of its usual channels, and the merchants, largely indebted for the extensive importations they had made, looked round in despair for an outlet to the produc-

* September 16, 1788.

tions, with the proceeds of which they were to meet their engagements.

To judge of the extent of the evil, it is only necessary to recur to the fact, that of the whole amount of their exports when colonies, those to the West Indies exceeded one-fourth. It was the more severely felt, because it chiefly fell upon the fisheries; that prolific treasure of the ocean, which the population of New-England regarded as a source of exhaustless wealth, whereof the product had composed more than one half of the articles of commerce in the West India markets, and a very large proportion of the whole exports of the colonies.* Cramped as they had been by the restrictive policy of the parent country, they had always found in the valuable products of the West Indies a return for the fruits of their enterprise, which afforded them continual relief. When deprived of this resource, universal irritation followed. The merchants were first aroused to opposition. This feeling soon extended to the people. Wholly unprepared to encounter the difficulties incident to their existence as an independent nation, and overlooking the rigid restrictions of France on the commerce with her dependencies, they denounced, as an act of hostility, the exercise of the unquestionable right of another independent nation to pursue its own distinct interests.

General combinations were instantly entered into to prevent the unlading of British vessels. New-Haven, where the occlusion was much felt, was foremost in the measures to induce the prohibition of English ships arriving

* The markets of Canada, Newfoundland, and Nova Scotia, and of a part of Europe, were cut off, and the annual government bounty of £20,000 sterling had ceased.

The product of the fisheries was estimated in congress to be one-sixth of the whole exports of the United States; elsewhere, at one-tenth. In 1775, Massachusetts employed in them, fourteen thousand tons; in 1787, four thousand.

from the West Indies.* A meeting was held at Philadelphia, urging in strong terms the same policy, which was re-echoed throughout the impoverished confederacy. While such was the temper of this country, an essay appeared in London, which being considered as an expression of the sentiments of the ministry of Great Britain, had much influence. It espoused with warmth the system of monopolies, argued the dependence of the confederacy upon British supplies, and promised to England, without further concessions, the exclusive trade of the United States. It also took an extensive view of their political condition; disclosed an undisguised contempt of the articles of the confederation; a full consciousness of the inability of congress to fulfil any treaty, from the conflicting powers reserved to the states; and a hope to avail themselves of the anarchy which must arise from the contending interests of various legislation, and of the facilities which the want of a uniform policy must give to the introduction of British manufactures.

Various replies to this pamphlet were made, showing great diversity of opinion, indicative rather of the ingenuity and fertility of the popular mind, than of sound and practical views of the true interests of the country. An essay at last appeared, containing "Strictures on commerce," which, taking an enlarged view of the British system, showed the impolicy of her monopolies, and that a general power of commercial regulation vested in congress would alone protect the commerce of this country, and prevent a dissolution of the union.* This opinion gained rapidly, and being accelera-

* This pamphlet was from the pen of William Bingham, late agent of congress at Martinique, elected to that body in 1786, and subsequently a senator of the United States. His language is, "The states, from a sense of common danger and common interest, will more closely unite together, and form one general system of exclusive navigation, in regard to Great Britain, established on clear, equal, and determinate principles of commercial retalia-

ted by the remonstrances of the West India islands, induced, at last, a definitive action by congress. The states were invited to invest them with this power for a short term; but this salutary proposition was opposed, and it was sought to substitute a recommendation to each legislature to make the discrimination.* Though this opposition proceeded principally from jealousy of a central jurisdiction, other causes had influence. Of these, the chief was a great diversity of opinion, whether the United States should promote their own maritime importance, or should abandon the ocean to foreigners. The former opinion was maintained by the eastern and middle states; those of the south having no vessels, were disinclined to a system which would temporarily increase the price of freight, and might, as they apprehended, render them tributary to the north. There was little prospect of an early concurrence in this measure. Meanwhile, the various delicate questions which had arisen out of the definitive treaty, and the growing animosities of the nations, showed the importance of closing the widening breach. This could only be effected by a commercial treaty; but the power of making an effective treaty had not been conferred on the confederation; and it has been seen from her reply to the overtures of the joint commission, that England was aware of it. This was a serious difficulty; but had the power existed, great doubts were entertained of the disposition of her councils. How long Jefferson continued to flatter

tion, which will pervade the whole union. An American looking forward to the future prosperity and power of his country, and contemplating the tendency of this system towards *strengthening the union of the states*, and making it *indissoluble*, will not hesitate to acquiesce, without a murmur, to the existence of these restraining regulations." Yet of *him* Madison states, "Mr Bingham *alone* avowed his wishes that the Confederacy *might be divided* into several distinct confederacies, its great extent and various interests being incompatible with a single government."—Madison Papers, v. 2, p. 589.

* April 30, 1784.

himself, is not known, but the hopeless prospect of the *joint* commission flashed on the mind of Adams soon after the annunciation of Great Britain, that she would require an embassy to London.

In a letter of the thirty-first January, seventeen hundred and eighty-five, to Gerry, a delegate to congress, he puts the inquiry, "What shall be done?" and answers by the observation, "There are but two things—either to send a minister to London, according to the king's polite invitation, and try what can be done there; or, commence immediately the sour work of retaliation. Will the states agree to exclude British ships from their ports, and British manufactures, or any of them? and can such prohibitions be executed, or high duties be levied? Suppose you lay a heavy duty upon every British vessel, or upon British manufactures, to retaliate for the duty on oil, &c., can we go through with it? We have no answers to any of the many things proposed to the British ministry through the Duke of Dorset, and I *really* think nothing will ever be done but by an exchange of ministers.*"

In another letter of the ninth of March following, he observes, "I think the invitation to send a minister to London should be accepted, as it is undoubtedly our place to send first, and as the neglect of exchanging ambassadors will forever be regarded as a proof of coldness and

* Life of Gerry, vol. 1, 464.—A preceding paragraph of the same letter shows the sacrifices Adams supposed he had made by his long residence in Paris. "I see the people have not lost sight of their old friends. I really feel an earnest desire to be one of you; but when will that be possible? It is more agreeable to be at home among one's equals, and to enjoy some degree of respect and esteem among those we feel a regard for, than to be admired by strangers; but to be in a foreign country, among strange faces, manners, languages, and looked at with terror—rarely finding a person who dares to speak to one, as has been my case, Mr. Dumas', Mr. Jay's, and others, for years together, is horrible; oh! 'tis horrible."

jealousy by the people of England, the people of America, and by all the courts and nations of Europe." A letter from him to the secretary of foreign affairs of the same date observes, "I am sure we could not do less, separately, than we are likely to do together. ..... I make no scruple, no hesitation to advise that a minister may be sent; nor will I be intimidated from giving this advice by any apprehension that I shall be suspected of a design or desire of going to England myself. Whoever goes will neither find it a lucrative nor a pleasant employment, nor will he be envied by me."*

The reply of Jay enclosed his credentials to the court of St. James.

Having remained some weeks in Paris, as he states, to perform the ceremonial of taking leave of the court of France, he arrived in London in May, prepared for his presentation at that of Great Britain.† These matters of etiquette being disposed of, Adams soon after entered upon the business of his mission.

It has been seen in his letter of January, written previous to his appointment, that an "embassy or retaliation" are presented as the alternatives. Those subsequent to it approve of the discriminating resolutions of certain states, and urge "that we have no means to make an impression, but by commercial regulations, which the vulgar may see strike essentially at their interests without injuring our own." The extent of the constitutional treaty power is also discussed; the supposed absurdity of thirteen ministers at every court, is indicated; the necessity of enlarging it, is zealously inculcated. This question had not occurred to the American commissioners on the annunciation to England of their joint authority.

* 2 Dip. Cor. 167.

† His amusing record of his presentation to the king and queen, will be found in Dip. Cor. vol. 4, p. 211.

The instructions to Adams directed him to insist upon the surrender of the posts and territories within the limits of the United States; to remonstrate against the infraction of the definitive treaty by the deportation of slaves and other property; and to represent the necessary tendency of the British restrictions to incapacitate our merchants from remitting to theirs, and the losses which would be sustained by an immediate pressure for the payment of debts contracted before the war. These claims were stated to the British minister at length. In prosecution of his object, the draft of a commercial treaty, the terms of which were subsequently approved by congress, was soon after submitted to the English cabinet.

England had expressed her readiness to receive proposals, but no disposition was evinced by her to enter upon a negotiation, nor to accredit an ambassador to the United States. The only reply given to the plan of treaty, was the inquiry, "Can the United States secure any privilege to Great Britain in which France will not participate?"* and the embassy to London was acknowedged by the appointment of a consul.

These were things not to be endured, and yet not to be resented by the American envoy. Feeling that from the magic circle of court formalities there was no escape, Adams, relying upon the vast results he attributed to a similar procedure at the Hague, resolved to bring the British ministry to a stand by presenting a memorial demanding the evacuation of the frontier posts. But again, delay was followed by delay—all was ceremony—month after month elapsed, when a reply was at last given. This reply avowed the determination of Great Britain to act in perfect conformity with the strictest principles of justice and good faith, and her readiness to carry every article of the

* 4 Dip. Cor. 333.

definitive treaty into full effect, whenever America should manifest a real determination to fulfil her part of it. It recapitulated the legislative acts of eight states, contravening its fourth article, and insisted on the injustice of being obliged to a strict observance of the public faith, while America held herself free to deviate from her engagements.

This answer was referred to Jay, who, after a full examination of it, in which it appeared that many of the charges were unsustained, admitted that the first of the imputed violations of the treaty had been committed by the states, some of which were still existing and operating; and that, under the circumstances, it was not a matter of surprise that the posts were detained, and that Britain would not be to blame in continuing to hold them, until America should cease to impede her enjoying every essential right secured to her and to her people and adherents by the treaty. The report closed with a recommendation, that congress should resolve that the states had no right to construe, retard, or counteract the execution of the treaty; and that all their acts inconsistent therewith should be repealed by their legislatures, in general terms. He also recommended, that the American minister should admit to Great Britain the violation of the fourth and sixth articles of the treaty; should state that measures were in progress to correct this; should conclude a convention for the estimation of property removed in violation of the seventh article, and for the remission of interest on private contracts during the war, and should express the determination of the United States to execute the treaty with good faith.

This unwelcome duty was imposed on Adams. The British ministry approved the spirit of the resolutions, but still adhered to the system it had adopted; in pursuance of which an act was passed for the regulation of their

trade with the United States, extending still further the prohibition from her islands of American products. Meanwhile, the tone of the public feeling, the omission to appoint a minister in return, frequent disappointments, and studied procrastinations, wore upon the temper of Adams, who at last, in his correspondence with the United States, cast off all restraint. At times he deemed an abandonment by America of her commerce, the wisest course.* Again, he urged a vindictive retaliation, as the only means of redress, and poured out philippics, denouncing, with indiscriminate wrath, England—her institutions—her king—her statesmen—her policy—her people.†

This was a wide departure from the opinions he had expressed at an earlier period. "Let us banish forever from our minds, my countrymen, all such unworthy ideas of the king, his ministry, and the parliament. Let us not suppose that all are become luxurious, effeminate, and un-

*4 D. C. 500.

† "There is no resource for *me* in this nation. The people are discouraged and dispirited, from the general profligacy and want of principle, from the want of confidence in any of the leaders, from the frequent disappointments and impositions they have experienced in turn from all parties. Patriotism is no more; nor is any hypocrite successful enough to make himself believed to be one. . . . . *Fox*, and his friends and patrons, are ruined by the endless expenses of the last election, and have no longer any spirit, or any enterprise. *North* and his friends are afraid of impeachment and vengeance, and therefore will avoid all hazardous experiments, by which the popular cry might be excited. *Pitt* is but a tool and an ostensible pageant, a nose of tender virgin wax; he could not carry in Parliament, nor in the cabinet, any honest system with America, if he meant to do it; but he is himself very far from being steady in his American politics, any more than *Camden* or *Richmond;* and Sydney and Carmarthen are cyphers."—4 D. C. 444-5, 468, 471. "'This nation would now crouch to France, for the sake of being insolent to us."—480. "The most remarkable thing in the king's speech and the debates is, that the king, and every member of each house, has entirely forgotten that there is any such place upon the earth as the United States of America. We appear to be considered as of no consequence at all in the scale of the world."—4 D. C. 481.

reasonable on the other side of the water, as many designing persons would insinuate. Let us presume, what in fact is true, that the spirit of liberty is as ardent as ever among the body of her nation, though a few individuals may be corrupted," &c.*

Alarmed by his extravagance, and apprehensive of being precipitated by his rashness into a contest for which the country was not prepared, a formal motion was made in congress and adopted, forbidding him to demand a categorical answer to his memorial, lest they should be involved in a war or in disgrace.† These orders were transmitted by Jay,‡ who, at the same time, recommended as the true policy of the nation, that "what wrong may have been done should be undone, and that the United States should, if it were only to preserve peace, be prepared for war."

Adams now began to meditate his return to the United States. The prospect of a new government opened more grateful scenes, and congress yielded to his desire to leave a position which he had prophetically anticipated would be a "thicket of briers." Dissatisfied with every thing, he bade adieu to England, where his worst fears had been realized of "the insignificance" to which he would sink, and of the alike "dry decency and cold civility" with which he would be treated by the administration and the opposition. On his return to the United States, he found new sources of discontent in the circumstances of his recall. On the twenty-fourth of September, seventeen hundred and eighty-seven, a report was made by Jay, embracing two points—an approval of his conduct, and a vote of thanks. It was rejected after a division on each point; but on the fifth of October the congress were in-

* "Essay on Crown and Feudal Laws, by J. Adams, Ambassador Plen." &c.

† 5 D. C. 358. ‡ May 8, 1786.

duced to relent. For this decision, he is believed to have been chiefly indebted to the exertions of a leading delegate* from Massachusetts.†

Much as there was in the conduct of Great Britain to disappoint expectation and wound national pride, yet on a dispassionate view, it is to be deemed the natural result of the relative situations of the two countries. Many of her statesmen saw, or imagined that they saw, in a close adherence to the colonial system the chief sources of her wealth. Her jealousy had long been awakened to the competition which the character and condition of the American people would produce, and every effort to relieve themselves from the pressure of her monopolies confirmed her adherence to them, and was followed by more minute and rigorous exactions. It could therefore with little probability be expected, that while she maintained her navigation act towards other nations, she would relax her system towards that power, whose interference with her trade she most feared, especially as the United States were, by the treaties they had formed, precluded offering to her any equivalent for such an exemption.

England also confided in the magnitude of her capital, in the credits she could give, and in the cheapness of her productions, as ensuring the introduction of them to the American market, where the habits of the people had always secured to her a preference. The efforts of France to compete with her had failed, and while the British merchants were engrossing the trade, France was occupied in speculating on the grounds of such a preference.

These circumstances, combined with too great a deference to the feelings of the monarch, had weight, but the consideration which chiefly influenced the court of St. James, was the political condition of the confederacy.

* Rufus King. † 5 D. C. 312.

Whatever might be the future resources of this nation, whatever were the capacities of the people, America now presented an unrelieved picture of anarchy and disunion. Her public engagements had nearly all been violated, her private resources appeared either to be exhausted, or could not be called into action; and while the individual states were pursuing measures of mutual hostility and detriment, the confederation was powerless over their laws, powerless over public opinion. Hence, to every argument or inducement in favour of a commercial treaty, there was an irrefutable reply—America will not, or if she would, she cannot fulfil it. "Our ambassadors," Hamilton observed, "were the mere pageants of mimic sovereignty."

In this brief retrospect of the negotiations with the two leading powers of Europe, nothing is more obvious than the want of that practical common sense, which had carried these States through the revolution, both in the objects, and in the conduct of them. This country was, in fact, without a government. Could it be hoped, that either France or England would treat on advantageous terms with a people who had not the power to fulfil their engagements? Could it be supposed, for a moment, that those old governments would abandon their artificial systems and fixed maxims, affecting so many public and private interests, for an untried theory?

Jefferson* at an early period advised that "the American workshops should remain in Europe;" that "perhaps it might be better for us to *abandon* the *ocean* altogether, that being the element whereon we shall be principally exposed to jostle with other nations; to leave to others to bring what we shall want, and to carry what we can spare." Now he is the projector of a system of entangling allian-

* Notes on Virginia, p. 175, 176.

ces with all the nations of Europe. He voted against a proposition to adopt the commerce of "natives" as the basis of treaties, and he proposed to treat with England on that basis. "I know," he wrote to Adams, "it goes beyond our powers, and *beyond the powers of congress too;* but it is evidently for the good of all the states that I should not be afraid to risk myself on it, if you are of the same opinion."*

Abandoning the principle of his own instructions,† he suggested to Vergennes‡ "that both nations would cement their friendship by approaching the conditions of their citizens reciprocally to that of 'natives,' as a better ground of intercourse than that of 'the most favoured nation.'" The reply of France was an arret, approving in its preamble a general freedom of commerce; but vindicating the "exclusion of foreign goods, as required under existing circumstances by the interest of the kingdom."

Yet he at the same period avows, "were I to indulge my own theory, I should wish them (the United States) to practise neither commerce nor navigation, but to stand, with respect to Europe, precisely on the footing of China."§

The opinions of Adams as to the foreign policy of this country, were not less various.

At one time he affirmed, "that it is in the power of America to tax all Europe whenever she pleases, by laying duties upon her exports, enough to pay the interest of money enough to answer all their purposes."‖ He then enters into this project of commercial freedom; then denounces it, declaring, "that we had hitherto been the bubbles of our own philosophical and equitable liberality;" and indicates as the only means of redress, "commercial regulations."¶

* 2 D. C. 338.—July 28, 1785. † Niles, v. 12, p. 82. ‡ November, 1785
§ October 13, 1785.—Jeff. Works, vol. 1, 344. ‖ 5 D. C. 502.
¶ 2 D. C. 338.

The course of events had proved the correctness of Hamilton's views, as he calmly consulted the great permanent interests of the country. Though in his liberal spirit the advocate of a policy which, he observed, would establish "our system with regard to foreign nations upon those grounds of moderation and equity by which reason, religion, and philosophy had tempered the harsh maxims of more early times, and that rejects those principles of restriction and exclusion which are the foundations of the mercantile and navigating system of Europe;" yet, judging wisely of human nature, of the force of habit, prejudice, and passion, he had from the earliest period indicated the necessity of conferring upon congress the power "of regulating trade, laying prohibitions, granting bounties and premiums."* And when he saw the confederacy nerveless—the states in collision—the people desponding—their energies withering under the restrictive regulations of Europe—he then again avowed the necessity of counteracting "a policy so unfriendly to their prosperity, by prohibitory regulations extending at the same time throughout the states," as a means of compelling an equal traffic; of raising the American navigation so as to establish "an active" instead of "a passive commerce;" of "a federal navy, to defend the rights of neutrality."

These views, as the perspective of this vast republic rose before him, were embraced in the exhortation—"Let Americans disdain to be the instruments of European greatness! Let the thirteen states, bound together in a strict and indissoluble union, concur in erecting one great American system, superior to the control of transatlantic force or influence, and able to dictate the connection between the old and the new world!"†

* The Constitutionalist, No. 4, August, 1781—No. 6, July 4, 1782

† The Federalist, No. 11.

CHAPTER XLI.

In the domestic situation of this country there was much to justify distrust. The definitive treaty had indeed assured almost Roman limits to the new republic; but the eastern boundary was disputed—the western denied—while from the frowning fortresses which dotted its outline, each morning's drum-roll struck alarm into the breast of the borderer, as it awakened in the crouching savage his slumbering appetite for carnage. The interior subdivisions were also unsettled. The coterminous states of Massachusetts and New-York had not yet wearied of their disputes. Pennsylvania, though her rights had been established under a constitutional tribunal, was threatened with a contest with the New-England settlers at Wyoming, who were preparing to refer their claims to the most summary arbitrament. Virginia was compelled to release Kentucky from her reluctant embraces. North Carolina was dissevered, and a fragment of her domains was forming into an independent state under the name of Frankland, of which an assembly preparatory to a convention had met.* While so many inducements existed to adopt a comprehensive national policy, such was the prevalence of state jealousy, that instead of labouring to invigorate the arm of the general legislature, an aversion to the restraints of law, and an increasing disposition to withhold confidence from the constituted authorities, were daily developed. Instead of looking for remedies to relieve the

* August 1, 1785.

public distresses, in every part of the continent the prevailing anxiety appeared to be to discover new objects upon which to vent dissatisfaction. A bill to repeal the charter of the Bank of North America passed the assembly of Pennsylvania. In New-York, a memorial to incorporate the bank, of which the constitution had been framed by Hamilton, was presented to the legislature early in seventeen hundred and eighty-four; but so prevalent was the jealousy of a moneyed influence, that it was compelled to conduct its affairs during six years without corporate immunities. The cry arose that banks were combinations of the rich against the poor, although, when not abused, their tendency is to raise industrious poverty above an undue influence of wealth.

These were minor indications. The craving appetite of discontent called for food, and the recent combinations of military men, and the dangers of a standing army in time of peace, became fruitful themes of clamour. An association of the officers of the late army, formed at the encampment on the Hudson, "to preserve inviolate the liberties for which they had bled, to promote and cherish national union and honour, and to render permanent the cordial affection of the officers by acts of mutual beneficence," under the now venerated title of "the Society of the Cincinnati," to continue during the lives of the members, with succession to their eldest male posterity, became an object of the most violent and wide-spread hostility.

The alarm was first sounded in an address under the signature of Cassius, written by Ædanus Burke, a judge of the supreme court of South Carolina, professing to prove that this association created a race of hereditary patricians, and full of trite allusions to the orders which had sprung up during the ages of European barbarism.

This popular topic was echoed throughout the states, and having performed its office in America, was seized

upon by Mirabeau, and depicted with all the power, art, and eloquence of his extraordinary genius.

The distrust thus excited in the minds of the people was cherished by persons, who, having served wholly in a civil capacity, had long been jealous of the superior popularity of Washington and of his companions in arms. One, with cold philosophy, advised them to "melt down their eagles"*—while another, with all the vehemence of "a disordered imagination," denounced the association as an inroad upon the first principles of equality—the deepest piece of cunning yet attempted—an institution "sowing the seeds of all that European courts wish to grow up among us of vanity, ambition, corruption, discord, and sedition."† The outcry which had been so successfully raised was deemed of sufficient importance to require the attention of the society.

A general meeting was convened, at which Washington, the president-general, presided, and an abolition of the hereditary provision was recommended. The following documents relating to this subject, show how entirely the real objects of this association corresponded with its professed purpose, and with what sentiments Washington viewed this impeachment of his pure and elevated patriotism. Hamilton thus represented to him the proceedings of the state society of New-York.

"SIR,

"Major Fairlie is just setting out on a visit to you, I believe on some business relating to the Cincinnati. The society of this state met some short time since, and took into consideration the proposed alterations in the original frame of the institution. Some were strenuous for adhering to the old constitution, a few for adopting the new and many for a middle line. This disagreement of opin-

* Jefferson. † Adams.

ion, and the consideration that the different state societies pursuing different courses—some adopting the alterations entire, others rejecting them in the same way—others adopting in part and rejecting in part—might beget confusion and defeat good purposes, induced a proposal, which was unanimously agreed to, that a committee should be appointed to prepare and lay before the society a circular letter expressive of the sense of the society on the different alterations proposed, and recommending the giving powers to a general meeting of the Cincinnati, to make such alterations as might be thought advisable to obviate objections and promote the interests of the society. I believe there will be no difficulty in agreeing to change the present mode of continuing the society; but it appears to be the wish of our members that some other mode may be defined and substituted, and that it might not be left to the uncertainty of legislative provision. We object to putting the funds under legislative direction. Indeed, it appears to us the legislature will not, at present, be inclined to give us any sanction.

"I am of the committee, and I cannot but flatter myself that when the object is better digested and more fully explained, it will meet your approbation.

"The poor Baron is still soliciting congress, and has every prospect of indigence before him. He has his imprudences, but upon the whole, he has rendered valuable services, and his merits and the reputation of the country alike demand that he should not be left to suffer want. If there should be any mode by which your influence could be employed in his favour, by writing to your friends in congress or otherwise, the baron and his friends would be under great obligations to you."

Washington replied:—"I have been favoured with your letter of the twenty-fifth of November, by Major Fairlie.

Sincerely do I wish that the several state societies had, or would adopt the alterations that were recommended by the general meeting in May, seventeen hundred and eighty-four. I then thought, and have had no cause since to change my opinion, that if the society of the Cincinnati mean to live in peace with the rest of their fellow-citizens, they must subscribe to the alterations which were at that time adopted.

"That the jealousies of, and prejudices against, this society were carried to an unwarrantable length, I will readily grant; and that *less* than was done *ought* to have removed the fears which had been imbibed, I am as clear in, as I am that it would not have done it; but it is a matter of little moment, whether the alarm which seized the public mind was the result of foresight, envy, and jealousy, or a disordered imagination; the effect of perseverance would have been the same: wherein then would have been found an equivalent for the separation of interests, which, from my best information, not from one state only, but many, would inevitably have taken place?

"The fears of the people are not yet removed, they only sleep, and a very little matter will set them afloat again. Had it not been for the predicament we stood in with respect to the foreign officers and the charitable part of the institution, I should, on that occasion, as far as my voice would have gone, have endeavoured to convince the narrow-minded part of our countrymen that the amor patriæ was much stronger in our breasts than theirs, and that our conduct, through the whole of the business, was actuated by nobler and more generous sentiments than were apprehended, by abolishing the society at once, with a declaration of the causes, and the purity of its intentions. But the latter may be interesting to many, and the former is an insuperable obstacle to such a step.

"I am sincerely concerned to find by your letter that the baron is again in straitened circumstances. I am

much disinclined to ask favours of congress, but if I knew what the objects of his wishes are, I should have much pleasure in rendering him any services in my power with such members of that body as I now and then correspond with. I had flattered myself, from what was told me some time ago, that congress had made a final settlement with the baron, much to his satisfaction."

The state society of New-York, of which Baron Steuben and General Schuyler were, at that time, the presiding officers, met on the fourth of July, seventeen hundred and eighty-six; on which occasion Colonel Hamilton delivered an oration, and at an adjourned meeting two days after, he presented a report, which was agreed to, in which his views as to the hereditary succession by right of primogeniture, and the distinction between military and civil members, are seen.

"The committee to whom was referred the proceedings of the society of the Cincinnati, at their last general meeting, beg leave to report, that they have attentively considered the alterations proposed at that meeting to be made in the original constitution of the society; and though they highly approve the motives which dictated those alterations, they are of opinion it would be inexpedient to adopt them, and this chiefly on the two following accounts.

"First—Because the institution, as proposed to be altered, would contain in itself no certain provision for the continuance of the society beyond the lives of the present members; this point being left to the regulation of charters, which may never be obtained, and which, in the opinion of this committee, so far as affects this object, ought never to be granted, since the dangers apprehended from the institution could then only cease to be *imaginary*, when it should receive the *sanction* of a *legal* establishment. The utmost the society ought to wish or ask from the several

legislatures is, to enable it to appoint trustees to hold its property, for the charitable purposes to which it is destined. Second—Because, by a fundamental article, it obliges the society of each state to lend its funds to the state; a provision which would be improper, for two reasons; one, that in many cases the society might be able to dispose of its funds to much greater advantage; the other, that the state might not always choose to borrow from the society.

"That while the committee entertain this opinion with respect to the proposed alterations, they are at the same time equally of opinion, that some alterations in the original constitution will be proper, as well in deference to the sense of many of our fellow-citizens, as in conformity to the true spirit of the institution itself. The alterations they have in view respect principally the duration or succession of the society, and the distinction between honorary and regular members. As to the first, the provision intended to be made appears to them to be expressed in terms not sufficiently explicit; and as far as it may intend an *hereditary succession* by right of primogeniture, is liable to this objection—*that it refers to birth what ought to belong to merit only;* a principle inconsistent with the genius of a society founded on friendship and patriotism. As to the second, the distinction holds up an odious difference between men who have served their country in one way, and those who have served it in another, and improper in a society where the character of patriot ought to be an equal title to all its members."

Time has furnished the best comment on the character and motives of this association. Notwithstanding all the alarms which were felt, or feigned, and the jealousies which were inflamed, these societies have retained the solitary solace of a riband and a medal to commemorate their sufferings; have persevered in performing their original office of silent benevolence, and are only known to

exist when they assemble to celebrate the birthday of independence; to confer a more sacred distinction upon some modern achievement of patriotism; or to remind posterity, in an unobtrusive recital of his merits, that "another patriot of the revolution is no more."*

The unrepealed proclamations of our great maritime rival, or, as England was termed, in language becoming an age of barbarism, our "natural enemy," were more worthy objects of opposition, and the first efforts to teach this "assuming brother" moderation, are among the most interesting and instructive portions of American history.

The first proclamation was issued in July, seventeen hundred and eighty-three. In December of that year, Virginia passed a resolution recommending congress to prohibit all intercourse, until the restrictions upon the commerce of the United States were removed. In the following year she enacted several laws of a commercial nature. One was to restrict foreign vessels to certain ports. Having instructed her delegates in congress to remonstrate against the infractions of the treaty, and to render the collection of British debts contingent upon its fulfilment, she passed an act empowering congress to regulate trade and to collect a revenue. In seventeen hundred and eighty-five she gave this subject a more deliberate consideration, and resolutions were proposed and discussed in her legislature of much moment.

* The medal was of gold, suspended by a blue riband edged with white, indicative of the union with France. The principal figure was Cincinnatus, three senators presenting him a sword, and other military ensigns. On a field in the background, his wife standing at the door of their cottage, near it a plough and instruments of husbandry. Around the whole, "Omnia reliquit servare rempublicam." On the reverse, sun rising; a city with open gates, and vessels entering the port; Fame crowning Cincinnatus with a wreath, inscribed, "Virtutis premium." Below, hands joining, supporting a heart, with the motto, "Esto perpetua." Round the whole, "Societas Cincinnatorum, instituta A. D. 1783."

It was moved that her delegates should be instructed to propose a recommendation to the states, to authorize congress to regulate the trade and collect the revenue upon the following principles. To prohibit vessels of *any nation not in treaty* from entering any of the ports of the United States, and to impose any duties on such vessels, or their cargoes, as they should judge necessary, provided they were uniform throughout the union; the proceeds to pass into the treasury of the states where they should accrue. To this general authority restrictions were to be annexed, that no state should impose duties on goods from another, by land or water, but might prohibit the importation from any other state of any particular species of any articles, which were prohibited from all other places; and that no act of congress, affecting this subject, should be entered into by less than two-thirds of the states, nor be in force beyond a limited term. An effort was made to introduce an amendment, authorizing a continuance of this act, by a vote of two-thirds of congress, if given within a year prior to the expiration of the limited period, or a revival of it by a similar vote within a year after. After much debate, the first resolution was so amended as to expunge the words, "nations not in treaty," and to extend the power "to any foreign nation."*

The authority to collect a five per cent. advalorem impost was refused, the restrictions on the respective states were retained, and the duration of the act was limited to thirteen years, the amendment authorizing its being continued having been rejected. After waiting a year for the concurrence of a sufficient number of states, in conferring this general power upon congress, Virginia, following the example of other states, passed a countervailing law, that no vessels trading to the state, other than those owned

* November, 1785.

wholly by American citizens, or by states having commercial treaties with the United States, should be permitted to import any other articles, than such as were the produce or manufacture of the state or kingdom to which they belonged. She gave a preference of duties to her own citizens, and discriminated between states having and those not having commercial treaties with the United States;* and for the purpose of encouraging ship-building within the state, gave a drawback on the duties imposed on articles imported in Virginia built vessels, wholly owned by citizens of the United States. These measures, viewed in connection with the vigorous and obnoxious system of taxation† she now imposed, and with the fact that she had opened communications with France in her separate capacity, could leave little doubt that she was preparing for the moment to assume her station at the head of a southern confederacy. In this countervailing policy it is believed that Maryland was the first of the southern states to concur.

The action of New-Jersey upon this subject was nearly contemporaneous with that of Virginia. As early as seventeen hundred and seventy-eight, she had represented, when congress were framing the articles of the confederation, that the exclusive power of regulating trade ought to be vested in that body, and that the commercial revenue should be applied to the equipment of a navy and to the common benefit. As soon as the policy of England gave

* December, 1786.

† She passed a *stamp* act levying duties on legal processes, and upon all alienations of property, and following out her policy of discrimination, a *carriage* tax, which was charged per wheel on all home-built coaches, and was more than doubled on imported carriages. She subsequently prohibited the importation of rum, brandies, and of all foreign malt liquors, and imposed a tax on bar iron and castings; hemp and hempen ropes not the product or manufacture of the United States. Thus far had that state proceeded, urged by a strong necessity, in a system of taxation, which, though much modified, she subsequently strenuously opposed.

practical evidence of her wise foresight, she again resolved* that congress ought to be invested with the power of prohibition. The contiguous state of Pennsylvania had shown herself at an early period inclined to a protective system, and her successive laws give evidence of her desire to encourage and to mature domestic manufactures by bounties and discriminations. Impelled at last by the same motives which had influenced other states, in March, seventeen hundred and eighty-six, she enacted a law restricting her commerce to American vessels, unless the imports were all in bottoms belonging to the countries of which their cargoes were the growth, product, or manufacture, under pain of forfeiture, and levied a tonnage duty of five per cent. on foreign vessels, annexing a condition, that this act should be in force until congress were invested with the necessary powers. She at the same time declared, "that the privilege in the degree retained by the states individually of controlling and regulating their own trade, was no longer compatible with the general interest and welfare of the United States; reason and experience clearly evincing that such a privilege is productive of mutual inconveniences and injuries among ourselves, and that the systems of several nations, by which our merchants are excluded from the most beneficial branches of their commerce, while the whole of ours is laid open to them, cannot be consistently or effectually countervailed but by a unity of counsel in the great representative body of the United States."

Connecticut had passed an "act for the regulation of navigation" during the war. In the preamble to it, she recited, that as "a free, sovereign, independent state, she had an equal right with all other sovereign powers to the free and undisturbed navigation of the high seas, and to exercise a convenient jurisdiction therein." By this act, her

* December 24, 1783.

governor was appointed "superintendent of marine," and a revenue system was established. In May, seventeen hundred and eighty-four, New-Haven and New-London were declared by her to be free ports. All persons removing there for the purpose of commerce, were to become free citizens; and immunities were offered to foreign capitalists who should engage in trade. This act cautiously provided, that no countenance should be given by it to the slave trade, and that it should not contravene any regulations which congress might be invested with, for the purpose of regulating commerce. Having granted to that body the power of raising an impost, she in the mean time imposed specific duties on certain enumerated articles, and an advalorem duty of five per cent. on all other imports, not the growth, produce, or manufacture of the United States, whether imported by land or water from any of the states, with a remission to those imported by citizens of the state through another state for their own consumption These duties were subsequently increased as to specified articles, most of which were selected with a view to encourage domestic manufactures, for which purpose, she had enacted laws granting bounties.* Subsequent to this legislation for local objects, she passed an act "vesting congress with power to regulate the commerce of the United States."

While the other members of the confederacy had manifested so strongly their sense of the evils which the policy of England had inflicted upon them, it was to have been expected that Massachusetts, as the largest navigating state, would have been the earliest to feel, the loudest to reclaim against, the most zealous to oppose, the measures

* May, 1784.—A bounty of two pence per ounce on raw silk raised and spun within the state. In 1787, she exempted from taxation buildings appropriated to the manufacture of woollen cloths, and the operatives from the poll tax, and gave a bounty on spun yarn. Iron works were also exempted from assessment, except slitting mills.

which paralyzed her industry. But that energetic state was yet under the influence of the party which had been signally hostile to Washington, and jealous of the general government.

The actual leader of this party was Samuel Adams; the nominal head, John Hancock. This gentleman was the child of good fortune. It had conferred upon him an importance to which he had not been destined by nature.

Limited in his information, and narrow in his views, he was content with the influence he had acquired over the less instructed population, in which he was much aided by the exterior graces of manner which adorned this possessor of enormous wealth. Jealous of his superiors, his flatterers were his advisers; hence his "great vanity, and excessive caprice." He was elected the governor of Massachusetts in seventeen hundred and eighty, and continued in office until seventeen hundred and eighty-five, when he resigned his place, shrinking from the responsibilities of a trying crisis. During his administration the government lost its dignity, the laws their influence.

Soon after the peace, when financial order was most demanded, her delegates to Congress were instructed to use "unremitting endeavours" to abolish the office of superintendent of Finance, and to have an annual Treasury Board elected, which, it is seen, was done. A solemn warning was uttered against the dangers of the moneyed influence in the hands of a single person. The refugees were proscribed as aliens*—their property confiscated. A military peace establishment was declared unauthorized by and inconsistent with the Articles of the confederation —dangerous and unnecessary. The Cincinnati were denounced,† and Knox and Heath concealed their eagles.

* Samuel Adams was chairman of the committee.—Files of General Court.

† By "Gerry's great zeal."—His Life, i., 420. S. Adams to Gerry: "I

The judiciary were directed to suspend judgment in actions by British creditors, and a suspension of the interest on debts due to them was continued by law. Members of Congress were declared ineligible to State offices, and even its secretary was required to be annually chosen. Thus an absurd and mischievous jealousy of the powers of that impotent body was sought to be widely circulated. When the voice of freedom is heard in such trills, it must be weak indeed.

But the term of this delusion was approaching its close. This fever of the imagination was abating. The people of Massachusetts, though fond of excitement, were too intelligent, longer to submit to the thraldom of the narrow opinions of narrow-minded partisans. Grave realities—strong necessities were pressing upon them. These must be met, and met by men equal to the coming crisis. The selfish and the speculative party of the Adamses was for a time cast aside, and a body of patriots—persons of large views, generous purpose, high courage—were charged with the public confidence.

New York having lost her vantage ground, by the influence of George Clinton, Massachusetts now stood, where from her exertions and her sacrifices, her numbers and her resources, Massachusetts had a right to stand, in the very foreground of national politics.

Hancock was succeeded by Bowdoin, the descendant of an affluent Huguenot who took refuge from religious persecution on the bleak, wild, weather-beaten shore of the province of Maine.

look upon it to be as rapid a stride towards a military nobility as ever was made in so short a time." John Adams to Gerry: "My countrymen give *reputations* to individuals that are *real tyrannies*. No man dare resist or oppose them. No wonder, then, that such reputations introduce chivalry, &c. The cry of gratitude—gratitude is animal magnetism."

Inheriting an ample fortune, he devoted his leisure to science, was an early and valued correspondent of Franklin, and was elected a fellow of the Royal Society.*

Chosen by his townsmen of Boston to the legislature, he took an active part in urging the plan of union proposed at Albany in seventeen hundred fifty-four. He next filled a seat in the Council, where he continued until seventy-four, leading the opposition of that body to the arbitrary proceedings of Governor Bernard; and thereafter was among the foremost in the revolutionary assemblies, until called to preside over the convention, which formed the constitution of the state in seventy-nine.

Thus mature in counsel, and fitted for executive functions, Bowdoin's long-cherished preference of an efficient union commended him to its highest office in the moment of greatest exigency, and well did he perform his arduous task; for his sense was strong, his decision manly, his views largely prospective.

In April, eighty-five, a town meeting was held at Boston under the auspices of Higginson, in whose measures, influenced by the mechanics of that place, Hancock concurred. At this meeting, a petition was preferred to Congress, to contravene the prohibitions of England; and a circular was addressed to other maritime places, which, after stating the heavy port charges and other duties levied by her, so prejudicial to the carrying-trade of the confederacy, proposed that Congress should be empowered to regulate commerce, in order "to secure reciprocity; and to form a national establishment," to provide for the national debts, and to protect the trade.

Governor Bowdoin, in his first message,† took high ground. John Adams complained, from London, that

* Address before the Maine Historical Society, by the Hon. Robert C. Winthrop.

† May 31, 1785.

England treated "the United States as a foreign nation."* Bowdoin *admitted* the undoubted right of foreign nations to regulate their trade, and asserted that "the United States have the same right, and can and ought to regulate their trade, on the same principle." He insisted on their duty to vest the power of regulation in Congress, but did not stop here. "It is of great importance," he proclaimed, "and the happiness of the United States depends upon it, that Congress should be vested with ALL the powers necessary to preserve the Union, to manage the general concerns of it, and promote its common interest." With this intent, he proposed a convention whose agreement, when confirmed by the States, would comprehend these powers.

This message produced its desired effect. The legislature passed a resolution, on the first of July, declaring that the powers of Congress were "not fully adequate to the great purposes they were originally designed to effect," and urging congress to recommend "a convention from all the States, to revise the confederation, and report to congress how far it may be necessary, in their opinion, to alter or enlarge the same, in order to secure and perpetuate the primary objects of the Union." The governor was requested by the General court, to address a letter on this subject to congress, enclosing, for their approbation, a circular to each of the States.

A short time before, an act had been passed, intended to retaliate the British restrictions; and, the next day, a law was enacted, levying discriminating duties, "to encourage agriculture, and to promote manufactures," and imposing an excise duty, and taxes upon luxuries.

The immediate motive to this protective legislation was the recent enactment of Connecticut. Bowdoin ad-

* Life of Gerry, i., 483.

dressed its governor an expostulatory letter as to the preference it gave to foreigners in prejudice to the United States; that it not only injured the foreign commerce of Massachusetts, but prevented its citizens from vending articles of their own manufacture to the citizens of Connecticut; "the more exceptionable, inasmuch as for the sake of cementing the Union, which is the true policy of the confederated commonwealth, our laws exact no duties on the manufactures of the United States, and in regard to commerce, their citizens respectively stand upon a footing with our own."

Immediately after, he transmitted a circular letter to the governors of each of the states, stating that the retaliatory act was "intended as a temporary expedient," urging its concurrence in vesting congress with "a well-guarded power to regulate the trade of the United States," and appealing "to the mutual feeling of friendship and attachment," "public virtue and supreme regard to the good of the whole, which so powerfully actuated them in the day of common danger, and which will be ever essentially necessary, so long as they shall continue to be one confederated commonwealth." His correspondence with Patrick Henry was most courteously urgent. "I trust," the gallant Moultrie replied, in behalf of South Carolina, "that this state, with every other in the confederation, are well convinced their existence as a nation depends on the strength of the union. Cemented together in one common interest, they are invincible—but ruined when divided, and must fall a sacrifice to internal dissensions and foreign usurpation."

Governor Henry assured him of the best dispositions in Virginia.

The delegates from Massachusetts to Congress were elected by and represented the feelings of the party

which had just been defeated. They were Gerry, Holten, and Rufus King; the first, long a member, the last, a native of Maine, recently appointed.

Bowdoin's letter to the President of Congress was enclosed to them. "Should," he wrote, "the nature and importance of the subject appear to Congress in the same point of light that it does to the court, they flatter themselves, that Congress will so far endeavor to carry them into effect, as to recommend a convention of the States, at some convenient place, on an early day, that the evils so severely experienced from the want of adequate power in the Federal Government, may find a remedy as soon as possible. As a perfect harmony among the States is an object no less important than desirable, the legislature of the Massachusetts have aimed at that unassuming openness of conduct, and respectful attention to the rights of every State in the Union, as they doubt not will secure their confidence and meet the approbation of Congress. A circular letter to the States is herewith transmitted to Congress, which they are requested to forward with their recommendation for a convention of Delegates from the States, if they should so far concur in sentiment with the court, as to deem such a recommendation advisable."

These delegates assumed the great responsibility of withholding from Congress the governor's letter and the resolves of the legislature on a question of the permanence of the UNION! "We have delayed," they stated to him, "any communication with Congress upon this subject, with an intention to state to your excellency our sentiments upon the probable tendency and consequences of the measure, should it be adopted by Congress, and acceded to by the states. We are sensible that our duty points out a prompt and exact obedience to the acts and instructions of the legislature, but if a case arises wherein

we discover most clearly consequences so fatal, that, had they been known, perhaps the measure adopted would not have been proposed, it may not be improper to delay a final execution until we have the instructions of the legislature, after such pernicious consequences of the measure shall have been submitted to their examination."

This exposition of their objections was made, after a delay of two months, on the third of September. It gives an interesting view of the fears and opinions of the party opposed to an effective system of government.

"Reasons assigned for suspending the delivery to congress of the governor's letter for revising and altering the confederation.

It may be necessary previously to observe, that many are of opinion the states have not yet had experience sufficient to determine the extent of the powers vested in congress by the confederation, and therefore that every measure at this time proposing an alteration is premature; but admitting the necessity of immediately investing congress with more commercial powers, it may be expedient to inquire—

First—Whether good policy does not require that those powers should be temporary?

In determining this question, we are led to consider the commercial evils to be remedied, the efficacy of temporary powers for this purpose, and the disposition of the several states touching the subject.

The evils principally consist in the impositions, restrictions, and prohibitions of foreign powers on our commerce, and in the embarrassment resulting from the commercial regulations of our own states. How far temporary powers can remedy these evils, perhaps time and experience can only determine. Thus much may nevertheless be suggested; that as several treaties which are now negotiating by our commissioners in Europe are not to exceed

the term of fifteen years, if the commercial powers to be vested in congress should be of a similar duration, they may remedy the evils for that term, and at the expiration thereof a new commercial epoch will commence, when the states will have a more clear and comprehensive view of their commercial interests, and of the best means for promoting the same, whether by treaties abroad, or by the delegation and exercise of greater commercial powers at home.

Whatever the disposition of the states may be, it can only be known by their acts; but the different views which they have had of the subject, give reason to suppose that some legislatures will think temporary commercial powers eligible under present circumstances; and should this be the opinion of but one, an attempt immediately to delegate perpetual commercial powers must fail, and may prevent a delegation of temporary powers. For in politics as in private life, by aiming at too much, one ofttimes accomplishes nothing.

Secondly—If the states are unanimously disposed to increase the commercial powers of the confederacy, should not the additional powers be in the first instance temporary, and the adoption of them as part of the confederation depend on their beneficial effects? This is a question on which we propose not to venture a decided opinion; but experience teaches us, that in the formation of constitutions and laws, the wisest men have not been able to foresee the evasions and abuses which in the operation have resulted from vague terms and expressions, latent inconsistencies, artful constructions, and from too full and unguarded a delegation of powers.

Whether the subject of commerce, and the danger to which the states may be exposed by a surrender to the union of their commercial authority, are so fully understood as to justify the consideration of an immediate altera-

tion of the confederation, is a matter that the legislatures alone are competent to determine. Any of them who may not be clear as to either of these points, will probably (as in the other case) be in the first instance in favour of temporary commercial powers, and, if approved by experience, of adopting them as part of the confederation; but should all the states be in favour of an immediate alteration of the articles, will it not be expedient for them previously to consider—that however great the abuse of this trust may hereafter be, however grievous to a considerable part of the union, the powers once delegated in the confederation, cannot be revoked without the unanimous consent of the states—that this may be earnestly sought for, but never obtained—that the federal and state constitutions are the great bulwarks of liberty—that if they are subject on trivial, or even important occasions, to be revised and re-revised, altered and realtered, they must cease to be considered as effectual and sacred barriers, and, like landmarks frequently changed, will afford no certain rule for ascertaining the boundaries, no criterion for distinguishing between the rights of government and those of the people—and, therefore, that every alteration of the articles should be so thoroughly understood and digested, as scarcely to admit the possibility of a disposition for reconsideration.

Thirdly—Shall any alteration, either temporary or perpetual, be proposed in a way not expressly pointed out by the confederation? The thirteenth article provides "that every state shall abide by the determination of the United States in congress assembled, on all questions which by this confederation are submitted to them. And the articles of this confederation shall be inviolably observed by every state, and the union shall be perpetual; nor shall any alteration at any time hereafter be made in any of them, unless such alteration be agreed to in a congress of the United States, and be afterwards confirmed

by the legislatures of every state." Here no provision is made for or against a convention, and therefore it may be said not to be inconsistent with this article; but as the proceedings of a convention would not be binding on congress, should the latter think themselves under the necessity of rejecting the report of the former, would not the states, after having thus incurred a considerable expense, be dissatisfied on the occasion? Would not the members of the convention, which it must be supposed would be men of the first abilities and influence in the several states, be hurt, and opposed in this instance to congress? And would not parties in the legislatures and among the people, be the consequence? If so, may not an apprehension of these evils have a tendency to influence some members of congress to give up their opinions respecting the repeal, rather than be involved in contentions; and if such are the prospects of a convention, will not congress consider it as being contrary to the spirit of the confederation? Indeed we are doubtful whether a measure of this kind would not be viewed as manifesting a want of confidence in congress, and on this ground meet their disapprobation.

Fourthly—If an alteration, either temporary or perpetual, of the commercial powers of congress is to be considered by a convention, shall the latter be authorized to revise the confederation generally, or only for express purposes? The great object of the revolution was the establishment of good government, and each of the states in forming their own as well as the federal constitution, have adopted republican principles. Notwithstanding this, plans have been artfully laid and vigorously pursued, which, had they been successful, we think would have inevitably changed our republican governments into baleful aristocracies. These plans are frustrated, but the same spirit remains in their abettors, and the institution of the

Cincinnati, honourable and beneficent as the views may have been of the officers who composed it, we fear, if not totally abolished, will have the same tendency. What the effect then may be of calling a convention to revise the confederation generally, we leave with your excellency and the honourable legislature to determine.

We are apprehensive, and it is our duty to declare it, that such a measure would produce throughout the union, an exertion of the friends of an aristocracy to send members who would promote a change of government; and we can form some judgment of the plan which such members would report to congress. But should the members be altogether republican, such have been the declamations of designing men against the confederation generally, against the rotation of members, which, perhaps, is the best check to corruption, and against the mode of altering the confederation by the unanimous consent of the legislatures, which effectually prevents innovations in the articles by intrigue or surprise, that we think there is great danger of a report which would invest congress with powers that the honourable legislature have not the most distant intention to delegate. Perhaps it may be said, this can produce no ill effect, because congress may correct the report, however exceptionable; or, if passed by them, any of the states may refuse to ratify it. True it is that congress and the states have such power, but would not such a report affect the tranquillity and weaken the government of the union? We have already considered the operation of the report as it would respect congress; and if animosities and parties would naturally arise from their rejecting it, how much would these be increased if the report, approved by congress and some of the states, should be rejected by other states! Would there not be danger of a party spirit being thus more generally diffused and warmly supported? Far distant we know it to be

from the honourable legislature of Massachusetts to give up a single principle of republicanism, but when a general revision shall have proceeded from their motion, and a report, which to them may be highly offensive, shall have been confirmed by seven states in congress, and ratified by several legislatures, will not these be ready to charge Massachusetts with inconsistency in being the first to oppose a measure which the state will be said to have originated? Massachusetts has great weight, and is considered as one of the most republican states in the union, and when it is known that the legislature have proposed a general revision, there can be no doubt that they will be represented as being convinced of the necessity of increasing generally the powers of congress, and the opinion of the state will be urged with such art as to convince numbers that the articles of the confederation are altogether exceptionable; thus, while measures are taken to guard against the evils arising from the want, in one or two particulars, of power in congress, we are in great danger of incurring the other extreme. "More power in congress," has been the cry from all quarters, but especially of those whose views, not being confined to a government that will best promote the happiness of the people, are extended to one that will afford lucrative employments civil and military. Such a government is an aristocracy, which would require a standing army and a numerous train of pensioners and placemen to prop and support its exalted administration. To recommend one's self to such an administration would be to secure an establishment for life, and at the same time to provide for his posterity. These are pleasing prospects which republican governments do not afford, and it is not to be wondered at, that many persons of elevated views and idle habits in these states, are desirous of the change. We are for increasing the power of congress as far as it will promote the happiness of the people, but at the same

time are clearly of opinion that every measure should be avoided which would strengthen the hands of the enemies to free government, and that an administration of the present confederation, with all its inconveniences, is preferable to the risk of general dissensions and animosities, which may approach to anarchy, and prepare the way to a ruinous system of government.

Having thus from a sense of duty we owe to the United States, as well as to our constituents, communicated to your excellency our sentiments on this important subject, we request you to lay them before the honourable legislature at their next session, and to inform them that their measures for a general revision of the confederation, if confirmed, shall be immediately communicated to congress. That no time will be lost by the suspension, since the requisition to the important matters before congress would have prevented them from an early attention to the *propositions* of Massachusetts, and that if these had been approved by congress, many of the legislatures being now adjourned, could not take the same into consideration.

E. Gerry,
S. Holten,
R. King."

The views here expressed show conclusively that congress had not advanced beyond the opinions entertained in eighty-three, when Hamilton abandoned his resolutions for the establishment of a National government, "for want of support."

Bowdoin gave a brief, conclusive, pregnant, contemptuous reply—"The only observation I shall make on the subject is, that if in the Union there is the operation of such discordant principles, as make it hazardous to intrust Congress with powers necessary to its well being, the Union cannot long subsist." The delegates, in answer,

insisted that the wiser course was "to make the powers temporary," to be adopted "when approved by experience; that, if a convention is necessary, its members should be limited in their authority, and confined to the revision of such parts of the confederation as are supposed defective, and not intrusted with a general revision of the articles, and a right to report a plan of federal government essentially different from the Republican form now administered."

The consequence of this opposition was the passage of a resolution, declaring that no further proceedings be had for revising the confederation.

CHAPTER XLII.

In the unavailing effort for self-protection by retaliatory commercial regulations, New Hampshire followed the example of Massachusetts.

The acts of both these States, as has been seen, were infractions of the treaty with France. A similar policy was pursued by Rhode Island.

These laws proved the inefficiency of State legislation. During their operation almost every foreign vessel, destined for those States, sought other ports. A commerce of great value was lost, and with it the revenue which had in part prompted to the discrimination.* These restrictive enactments were soon repealed, and thus all the injuries were suffered, which are the fruits of precipitate legislation.

But these evils had a wider influence. The laws levying imposts disregarded all uniformity, both as to the rates of duty, and as to the articles on which they were charged.†

* Representations were made to the Virginia legislature that her commerce had passed into other States, and that what she lost, Maryland gained by her lower duties.

† The disparity of the duties is seen in the fiscal provisions of the Southern States, whose interests at that time approximated. Maryland levied one shilling and sixpence per ton on goods of those *in treaty*, two shillings and eight pence on those *not* in treaty, on British goods, 6s. 8d., and two shillings extra per ton on other goods. Virginia laid three shillings and sixpence on those *in* treaty, six shillings and sixpence on those *not* in treaty, besides two per cent. extra. South Carolina, two shillings and ninepence on British sugars, one shilling and eight pence on those of other nations.

The consequences of this inequality were soon felt, but instead of looking to the want of uniformity, as the radical source of the mischief, the wildest remedies were resorted to. Oppressive penalties, accumulated oaths, multiplied revenue officers, extravagant and partial exemptions—the obvious resources of ignorant legislation—followed; and when these failed, the states were seen competing with each other in a reduction of duties, in order to secure a preference to their own ports. Another consequence of this disordered state of things was the negotiation of commercial leagues, growing out of geographical causes, between the states of New-Jersey and Pennsylvania, and of Maryland and Virginia, in direct contravention of the sixth article of the confederation. The remedy for these evils had been recommended by congress—the investing them with a general power for the regulation of commerce. The delay to embrace it is more decisive than any other fact of the irrational adherence to state rights. Only four states had fully complied with this recommendation. Six had enacted laws clogged with embarrassing conditions Two had wholly disregarded it.

How narrow were the views which could not see the advantages of an unrestrained intercourse between the states, thus increasing the variety of exports, and enlarging the field of commercial enterprise! How blind the jealousy which, in withholding a central power to regulate commerce, overlooked the obvious facts, that, intersected as the states are by deeply penetrating rivers, or divided by artificial boundaries, no efficient guards against illicit trade could be interposed by means consistent with the maxims of a mild policy, and with a moderate expense; and that the necessary expense would compel a resort to harsh and onerous systems of taxation; that thus the states "would be obliged," in Hamilton's language, "to strengthen the executive arm of government, in doing which their consti-

tutions would acquire a progressive direction towards monarchy."

At the meeting of the legislature of New-York, in the year seventeen hundred and eighty-four, Governor Clinton proposed an enlargement of the powers of congress, if necessary, to counteract the British proclamations. He also suggested the establishment of funds to pay the interest and discharge the principal of the state debt, and indicated as means, exclusive of direct taxation, the sale of the public lands, internal duties and excises, marine passes, and a tax on sales at auction. The suggestion as to the enlargement of the powers of congress, was not acted upon.

The state preferred exercising a control over its commerce, and having established a customhouse, passed an act regulating the customs. This act imposed a double duty on distilled spirits imported in vessels having a British register, but made no other discrimination. A similar duty was, during the next year, proposed on all imports in vessels owned in whole or in part by British subjects, unless, for the purpose of encouraging navigation, such vessels were built within the state.*

Sensible of the necessity of conferring this power on the confederacy, General Schuyler opposed this act in the senate, and Duer in the assembly. It was negatived by the council of revision, on the ground "that every attempt by a state to regulate trade without the concurrence of others, must produce injury to the state, without any general good; that partial duties would lead to countervailing duties, and that state legislation on this subject, would interfere with and embarrass the commercial treaties." It nevertheless became a law.

* Congress had, in April, 1784, recommended the grant of a general power to them for this purpose. This local act was passed in the following November.

Assured that the conferring on congress the sole power of commercial regulation, would be an important step towards the institution of a more efficient government, Hamilton is now seen again exerting his influence. The chamber of commerce were advised to petition the legislature. A large meeting was convened in New-York, which was earnestly addressed by him, and passed resolutions recommending the measure. Circulars were issued to the other states, and a correspondence opened, which urged an enlargement of the powers of congress to enable them to regulate trade and to establish a navy.

The legislature yielded to these combined efforts, and at the end of the session of seventeen hundred and eighty-five, passed an act to vest congress for a term of fifteen years with power to prohibit the importation or exportation of articles of commerce in the vessels of states "not in treaty," and also to prohibit the subjects of any foreign state, not in treaty, from importing any goods or merchandise, not the produce or manufacture of the sovereign whose subjects they were. But an express proviso was annexed, excluding the United States from collecting any revenue or duties *within* the state, without the sanction of its legislature.

The delay of New-York to concur in this measure of general relief, had created great excitement in the adjoining states of New-Jersey and Connecticut. The former declared Perth Amboy and Burlington free ports, and offered special exemptions to merchants removing thither, as lures to commercial capital. In Connecticut, such was the discontent, that an entire prohibition of all intercourse with its southern neighbour was proposed, and would probably soon have been attempted.

While this conflicting legislation prevailed in the various states, the patience of the suffering people was nearly exhausted. In several, the debtors were seen striving to obtain an ascendency in the legislatures, and by suspension acts to

delay the collection of debts; and a general disposition was discovered, notwithstanding its evils had so recently been felt, to seek relief in state emissions of paper money.

A majority was found in New-York, in despite of the most earnest remonstrances through the press, in favour of the issue of bills of credit, which were declared a legal tender, and a discrimination was contemplated among the different classes of creditors. Two-fifths of the debt due by congress to the state were to be provided for, and the claims of the army, of the holders of the loan-office certificates, and of the board of treasury, were to be turned over to the exhausted exchequer of the union,—thus by dividing the interests of the creditors, to weaken one of the principal supports of the continental system. A bill for the emission of state paper also passed the assembly of New-Jersey, but was rejected by the council through the firmness of Governor Livingston. So great was the popular excitement against him, that this virtuous patriot was loudly decried and burned in effigy.

South Carolina adopted a similar policy. Every effort was made by its citizens to sustain the credit of the paper; but such were their impoverishment and discord, that it was thought necessary to pass laws tantamount to closing the courts of justice. North Carolina and Georgia* followed this vicious example. Thus, of the southern states, Maryland and Virginia only escaped the contagion.

Rhode Island, whose conduct had become a reproach to its inhabitants, did not merely issue a state paper, but finding it rapidly sinking, passed laws, rendering a refusal of it at specie value highly penal in the first instance—declared that a second offence should be followed by disfranchisement, and created special tribunals to try the

* The paper of North Carolina is stated to have depreciated 25 per cent; that of Georgia and Rhode Island, 80 per cent.

offenders, depriving, by a formal enactment, the accused party of trial by jury. Clauses were added imposing a test oath to support the paper at par, suspending all officers who should not subscribe it within twenty days after its date, rendering a subscription of this oath a qualification of the next legislature, and compelling every male who had arrived at manhood to take it, or be disfranchised. It was called the bloody bill. An information was filed for refusing the paper. The judges of the supreme court decided against it. They were summoned to appear before the assembly to explain their decision: four of them were displaced by the omnipotence of the democracy.

Indignant at these reckless proceedings, Connecticut enacted a retaliatory law suspending existing suits, and forbidding the commencement of others.

Indications of a similar temper were evinced in Massachusetts. A proposition was widely circulated, that the New-England states should virtually abdicate the union by the withdrawal of their delegates from congress; and in the disorganizing rage for dismemberment, her western counties began to look to a severance from her dominion. But as a state, Massachusetts firmly adhered to the obligations of good faith, resisted every effort to emit paper, rejected with indignation a proposal to purchase her securities at a depreciated value, granted the impost to congress, and subsequently passed a law to carry into effect its propositions for supplementary funds.

The vigour of character which distinguished her in her support of the public faith, was not less shown by that part of her population who, from a variety of causes, were opposed to the requirements of justice.

While in other states much noisy discontent and angry clamour were heard, among this energetic people dissatisfaction soon ripened into rebellion.

Peculiar causes had combined to increase the pressure

on the states of Massachusetts and New-Hampshire. Their seaboard population, from being engaged in the fisheries, and thus following pursuits far removed from the influence of the laws, were little accustomed to restraint. Thrown out of their ordinary occupations at a time when the price of labour was low, they were compelled to seek subsistence on any terms, and thus diminished its general value. The demand for supplies created by their remote expeditions had ceased. The commercial restrictions prevented the outlet of the surplus produce of the state; and thus both classes, the grower and the consumer, were mutually impoverished; and the taxes, which prior to the revolution had little exceeded one hundred thousand pounds, had augmented to an enormous amount. The depreciation of the currency increased the distress. While it enhanced the nominal amount of the taxes and public charges, by interrupting private credit, it deterred from pursuits which alone could provide resources for their discharge, and led on to speculative measures, all of which aggravated the evil.

A large number also of the inhabitants had been called out by military requisitions during the war on temporary expeditions, and leaving the sober routine of ordinary life, had acquired all the licentiousness without the discipline of the camp. The firmness of the legislature put in motion every active and turbulent spirit. Combinations were formed entertaining desperate designs, and conventions of delegates from extensive districts of the state were held, which adopted the most violent resolutions, censuring every measure that had been taken to fulfil the public engagements; declaring open hostility to the ministers of justice; calling for an abolition of all existing contracts; claiming an equal distribution of property; and at the same time professing that their proceedings were constitutional!

This ebullition was soon followed by acts of open resist-

ance to the laws. The courts were surrounded by insurgents; mobs accompanied the judges in their circuits; and in the three western and largest counties of the state, all legal process was defied. On intelligence of these proceedings, the state government attempted to exert its civil power; but instead of repressing, this confirmed and irritated the insurgents. The contagion spread from town to town, and it at last became manifest that a military force could alone overawe their violence.

The legislature having been convened, measures were adopted, not without opposition from those claiming the appellation of the friends of the people, conferring powers on the executive equal to the emergency. These became the subjects of louder clamours and greater irritation. Offers of pardon were disregarded. Renewed and more extensive opposition was excited against the courts of justice, which were in one instance compelled to stipulate to hold no future sessions, and in another to give hostages for the protection of the insurgents. In Taunton, it was deemed necessary to station a body of militia to secure the judges and the jury from personal violence. The discontented, who had previously shown themselves in detached parties, moved to a common point; and at last a body of a thousand insurgents was collected under the command of a late captain in the continental army, who billeted themselves upon the inhabitants, and apprehended every person obnoxious to their views. The necessity of abandoning the lenity which had thus far governed the councils of the state, now became obvious. Orders were given to the militia to march upon certain positions, and the assembled corps were put in motion —one under General Lincoln, the other under General Shephard—to check the progress of the insurrection. These decisive steps were attended with complete success. The insurgents in most instances fled before the military.

Where they made a stand, their resistance was feeble and heartless, and after a few occasional skirmishes, they dispersed and took refuge in the adjacent states. With little hope of success, and without the means of keeping in a body, they soon dwindled into insignificance, and except a few predatory incursions by which the frontiers of the state were harassed, quiet was restored.

In New-Hampshire,* a similar spirit had been also aroused. In the beginning of eighty-five, the legislature, yielding to the distresses of the people, had enacted a law making every species of property a tender at an appraised value. The creditors consequently withheld their demands, and the debtors neglected payment. Goods and real property being thereby substituted as a medium of exchange, specie was hoarded, credit suspended, and the distress increased. A convention was held which urged upon the government the emission of bills of credit, that should be a legal tender. A plan was formed by the legislature for an issue, to be loaned on landed security, redeemable at a future period, which was submitted to the people; but before any expression of opinion could be obtained, an armed body assembled at Exeter, the seat of government, where the legislature was in session, and demanded an immediate compliance with their terms. The alarmed assembly proposed to consider their complaints; but the senate maintained its dignity. General Sullivan, who was the president, addressed the people, exposing the absurdity of their demands, and avowing his determination, even if the whole state was in favour of the measure, not to yield while they were surrounded by an armed force; and that no consideration of personal danger should compel him to so flagrant a violation of the constitutional rights of the people.

The contumacious mob then beat to arms, loaded their

* Collections of the New-Hampshire Historical Society.

muskets with ball, and placing sentinels at the doors, held the legislature prisoners throughout the day. At nightfall, Sullivan again addressed them. In reply to his firm harangue, nothing was heard but loud clamours for "*paper money*"—"*an equal distribution of property*"—"*the annihilation of debts*"—and "*a release of taxes.*" At this moment a drum was heard, and a party came in sight, huzzaing for government. The mob was alarmed, and Sullivan, followed by the legislature, passed unimpeded through its dense columns. He immediately reassembled the legislature in another place, issued orders at midnight for the militia, and a body of two thousand being collected at an early hour, he advanced and addressed the insurgents, drawn up in order of battle. A part yielded, the rest fled, and, except to an attempt to seize the persons of their leaders, no resistance was offered. The contest was soon after transferred from the field to the elections, and, without any diminished cause of discontent, the people settled down in a general submission to the laws. The leaders, Parsons, Shays, and French, threw themselves on the mercy of government, which, with a prudent mildness, was satisfied with their disfranchisement.

It would be an error to pronounce the issue of these events merely fortunate, for where can an instance be adduced of so great and long-continued an excitement, proceeding from such ample causes, among a people just emerging from a civil war, subdued so soon by a reluctant exercise of power, and that power the very people, most of whom were participators in the sufferings which sharpened the edge of discontent?

The ease with which this insurrection was suppressed, may be in part attributed to the influence of a few of the leaders in the revolution, who continued to possess the confidence of the public; but more is to be ascribed to the character of an enlightened and not dense community, where an equal condition and equal forms of government

had produced habits of obedience to, and reverence for, the laws. But it would be not less an error to overlook the fact, that the issue of this controversy is a rare exception to the usual course of such events, and to infer from it, that a civilized society may safely repose upon the undirected virtue and intelligence of its members. The tendency of civilization is to produce inequalities of condition, and in the short period which has elapsed since this rebellion, and notwithstanding the propitious circumstances in which she has been placed, it would be vain at this time to expect, even in Massachusetts, a similar result.

A more extraordinary deduction has been drawn from the tranquil termination of this contest with the laws—that rebellions are salutary; "that the tree of liberty must be watered with blood,"* and that societies which rely for the preservation of order upon the vigour of government, are unwisely constituted.

Every violent aggression upon constitutional authority is an invasion of the first principle of social institutions; and little permanence or happiness can those institutions hope to enjoy, or to preserve, which for a moment admit the dangerous doctrine, except in the extreme cases which justify a revolution, of a resort to force.

Another inference must be adverted to, because it is known to be the basis upon which a large superstructure of invidious censure upon the people of New-England has been raised—that these scenes prompted in that part of the confederacy a desire for a monarchical form of government. This is an error natural to the region of country in which it was propagated; for where slavery debases all at least below the rank of master, how short is the interval between revolt and ruin; how great the excuse for rigour in the harsh; how little room for lenity in the gentle; how fear-

* Jefferson's writings.

ful the consequence of awakening the sufferer to a sense of his injuries; how prone the mind to power! But there is no analogy in the respective circumstances of the southern and the eastern states. Under less equal forms, rebellion has usually produced some great modification of the political system, either by larger grants of privilege to the subject, or greater concentration of strength in the rulers; but in New-England, weakness made no sacrifices, power acquired no augmentation, and the insurgents were seen to lay down their arms, not as trembling vassals, reduced to the sway of an imperious master, but as an erring part of the people rejoining the mass, happy to return under the protection of laws which they had shared in framing, and knew they could participate in modifying. There is not an authenticated fact to show, that these events excited a wish for any other than a more efficient but equally free government.

Whether by giving a different direction to the public mind, and offering a new hope of relief, the proposed convention of the states would have prevented these alarming occurrences, it is impossible to determine. The despair of aid from state legislation may have stimulated the people to violence; but it is rather to be believed that the popular feelings were too much excited, the suffering too great and extensive, to have waited the issue of so slow a process. The rebellious temper of the populace rendered a vigorous exertion of the powers of government necessary; and it cannot be doubted, that this necessity had much influence in inducing the states to consent to the establishment of the federal constitution.

The prostration of commerce, the poverty and anarchy of the country, the hopeless prospect before them, compelled the people to feel the want of that which Hamilton was the first to indicate as the only resource—"a more perfect union." New-York had been the earliest to pro-

pose a convention of the states. After longer experience, Massachusetts had declared her conviction of its necessity; to which Virginia, eminently jealous of her state sovereignty, was impelled by peculiar circumstances at last to assent.

Her geographical position rendered it extremely difficult to establish an efficient, and at the same time an independent revenue system. This difficulty had early suggested the importance of forming a compact with Maryland, as to the jurisdiction of their confluent waters; and in December, seventeen hundred and seventy-seven, commissioners were appointed by Virginia for this object. The subject was resumed in seventeen hundred and eighty-four, and a similar commission created. Nothing having been effected by them, new commissioners were chosen in the succeeding year, who met the deputies of Maryland at Mount Vernon. There they agreed upon an act regulating the commercial intercourse through the Potomac and Chesapeake, and defining the jurisdiction of each state. But at the moment of framing this compact, they deemed it necessary to extend its provisions so as to authorize the establishment of a naval force to protect these estuaries, and the formation of a mutual tariff. This compact, by the articles of the confederation, required the previous consent of congress. To obviate that difficulty, these deputies recommended to their respective states the appointment of other commissioners with enlarged powers, to whose proceedings the permission of congress was to be solicited.

On the thirteenth of January, seventeen hundred and eighty-six, resolutions passed the legislature of Virginia for a uniformity of duties between the two states, and that commissioners should be chosen to meet annually, if required, to regulate their mutual commercial interests They were instructed particularly to provide, that foreign

gold should pass at the same rate in both states, and that the same amount of damages should be charged on protested bills of exchange. A few day's after, the house of delegates passed a resolution, directing the projected arrangement to be communicated to all the other states, who were invited to send deputies to a general meeting for the precise purpose "of considering how far a uniform system of taxation in their commercial intercourse and regulations might be necessary to their common interest and permanent harmony; and to report an act relative to this great object, which, when ratified, would enable the United States, in congress assembled, effectually to provide for the same."* Thus it will be seen that Virginia merely contemplated a *commercial arrangement*, falling far short of the policy which New-York and Massachusetts had previously embraced.

Her reluctance in granting, and her repeals of the impost,† her hostility to a federal judiciary; her jealousy as to the Mississippi;—all leave little room for doubt, that the project of a continental convention to frame a constitution, would at an earlier period have been feebly sustained by her. Washington's circular letter had produced no action on her part, and her councils were swayed by penmen who looked upon an invigoration of the union with jealousy, because the suggestion had emanated from the army, and who, speculating in their closets on the dangers of conferring power, had not considered how much greater were the evils of usurpation, even from "necessity," than those

* This resolution was moved by John Tyler, on the maternal side, of Huguenot descent.

† In a letter from R. H. Lee, he states his apprehensions of alterations in the articles of the confederation, that he had "ever been opposed to the five per cent. impost," that he never could agree that congress "shall dictate the mode of taxation, or that the collection shall in any manner be subject to congressional control." He was opposed to the power of regulating trade — Life, v. 2, pp. 62, 71.

of a large constitutional authority.* Yet the precedence of that state in this important measure, has been claimed without hesitation, and generally received as a part of American history. It is time that this error, with many others, should be corrected.

Soon after this project was first agitated, Hamilton, whose mind had ever laboured with the great design of a national constitution, determined to bring about the co-operation of New-York. It was a part of his plan, that the state legislature should definitively adopt or reject the revenue system of seventeen hundred and eighty-three, and in case of its rejection, should appoint commissioners to attend the commercial convention. "Hamilton," Troup relates, "had no idea that the legislature could be prevailed on to adopt the system as recommended by congress, neither had he any partiality for a commercial convention, otherwise than as a stepping stone to a general convention, to form a general constitution. In pursuance of his plan, the late Mr. Duer, the late Colonel Malcom, and myself, were sent to the state legislature as part of the

* In a letter of Madison to R. H. Lee, he observes, "*I have not yet found leisure* to scan the project of a continental convention with so close an eye as to have made up any observations worthy of being mentioned to you. *In general*, I hold it for a maxim, that the union of the states is essential for their safety against foreign danger and internal contention, and that the perpetuity and efficacy of the present system cannot be confided in. The question therefore is, in what *mode* and at *what moment* the experiment for supplying the defects ought to be made. The answer to this question cannot be made without a knowledge, greater than I possess, of the temper and views of the different states. Virginia seems, I think, to have excellent dispositions towards the confederacy, but her assent or dissent to such a proposition, would probably depend much upon the chance of having no opponent capable of rousing the jealousies and prejudices of the assembly against innovations, particularly such as will derogate from *their own power and importance*. Should a view of the other states present *no objections* against the experiment, individually, I would wish none to be presupposed here."—2 Life of R. H. Lee, p. 220. Dec. 25, 1784.

city delegation, and we were to make every possible effort to accomplish Hamilton's objects.

"Duer was a man of commanding eloquence. We went to the legislature, and pressed totis viribus the grant of the impost agreeably to the requisition of congress. We failed in obtaining it. The resolutions of Virginia were communicated by Governor Clinton, on the fourteenth of March, seventeen hundred and eighty-six. We went all our strength in the appointment of commissioners to attend the commercial convention, in which we were successful. The commissioners were instructed to report their proceedings to the next legislature: Hamilton was appointed one of them. Thus it was, that he was the principal instrument to turn this state to a course of policy that saved our country from incalculable mischiefs, if not from total ruin."

While this subject was in agitation in other states, Governor Bowdoin was using all his influence to incite the people of Massachusetts to the promotion of their true interests. In a special message, he urged upon the legislature the protection of manufactures, stating that the looms were idle, in consequence of excessive importations. On a subsequent occasion, after descanting upon the importance of conferring the necessary powers upon congress, he placed before them the serious inquiry, "Shall the union cease to exist?" and as soon as he received the circular of Virginia, he recommended the appointment of commissioners to the commercial convention, which the legislature approved. New-Jersey, Delaware, and Pennsylvania cooperated in the measure. "The delegates appointed by New-York were Hamilton, Duane, Robert R. Livingston, Robert C. Livingston, Benson, and Gansevoort. Gansevoort declined the appointment. Duane was prevented attending by indisposition, Robert R. Livingston by business. Hamilton and Benson (then attorney-general of

the state) proceeded to Annapolis, where they met the other commissioners." After a short interview, "a committee was appointed to prepare an address to the states, which was reported and agreed to,—the whole in the course of three or four days, and we separated. The draft was by Hamilton, although not formally one of the committee."*

In the draft as originally framed, Hamilton had exhibited frankly and at large the condition of the states, and the necessity of an efficient government. But it was thought,† from the sentiments of some of the delegates, and the lukewarmness exhibited by the non-attendance of so many states, that his statements were too explicit, and he reduced the address to the form in which it now appears, signed by Governor Dickinson, as chairman of the meeting.

ANNAPOLIS, September 14th, 1786.

"To the honourable the legislatures of Virginia, Delaware, Pennsylvania, and New-York.

"The commissioners from the said states respectively assembled at Annapolis, humbly beg leave to report, That pursuant to their several appointments, they met at Annapolis, in the state of Maryland, on the eleventh day of September, instant, and having proceeded to a communication of their powers, they found that the states of New-York, Pennsylvania, and Virginia, had in substance, and nearly in the same terms, authorized their respective commissioners to meet such commissioners as were or might be appointed by the other states in the union, at such time and place as should be agreed upon by the said commissioners, to take into consideration the trade and commerce

* Memoir published by Judge Benson.

† The governor, Edmund Randolph, objected to the report as first framed. Madison then observed to Hamilton, "You had better yield to this man, for otherwise all Virginia will be against you."

of the United States, to consider how far an uniform system in their commercial intercourse and regulations might be necessary to their common interest and permanent harmony, and to report to the several states such an act relative to this great object, as, when unanimously ratified by them, would enable the United States in congress assembled effectually to provide for the same.

"That the state of Delaware had given similar powers to their commissioners; with this difference only, that the act to be framed in virtue of these powers, is required to be reported 'to the United States in congress assembled, to be agreed to by them, and confirmed by the legislature of every state.'

"That the state of New-Jersey had enlarged the object of their appointment, empowering their commissioners 'to consider how far an uniform system in their commercial regulations, and *other* important matters, might be necessary to the common interest and permanent harmony of the several states; and to report such an act on the subject, as, when ratified by them, would enable the United States in congress assembled effectually to provide for the exigencies of the union.'

"That appointments of commissioners have also been made by the states of New-Hampshire, Massachusetts, Rhode Island, and North Carolina, none of whom, however, have attended. But that no information has been received by your commissioners of any appointment having been made by the states of Connecticut, Maryland, South Carolina, or Georgia. That the express terms of the powers to your commissioners supposing a deputation from all the states, and having for their object the trade and commerce of the United States, your commissioners did not conceive it advisable to proceed to the business of their mission under the circumstance of so partial and defective a representation.

"Deeply impressed, however, with the magnitude and importance of the object confided to them on this occasion, your commissioners cannot forbear to indulge an expression of their earnest and unanimous wish that speedy measures may be taken to effect a general meeting of the states in a future convention for the same, and such other purposes, as the situation of public affairs may be found to require.

"If in expressing this wish, or intimating any other sentiment, your commissioners should seem to exceed the strict bounds of their appointment, they entertain a full confidence that a conduct dictated by an anxiety for the welfare of the United States will not fail to receive a favourable construction. In this persuasion, your commissioners submit an opinion that the idea of extending the powers of their deputies to other objects than those of commerce, which had been adopted by the state of New-Jersey, was an improvement on the original plan, and will deserve to be incorporated into that of a future convention. They are the more naturally led to this conclusion, as, in the course of their reflections on the subject, they have been induced to think that the power of regulating trade is of such comprehensive extent, and will enter so far into the general system of the federal government, that to give it efficacy, and to obviate questions and doubts concerning its precise nature and limits, may require a correspondent adjustment of other parts of the federal system. That there are important defects in the system of the federal government, is acknowledged by the acts of all those states which have concurred in the present meeting; that the defects, upon a closer examination, may be found greater and more numerous than even these acts imply, is at least so far probable, from the embarrassments which characterize the present state of our national affairs foreign and domestic, as may reasonably be supposed

to merit a deliberate and candid discussion in some mode which will unite the sentiments and councils of all the states.

"In the choice of the mode, your commissioners are of the opinion that a CONVENTION of deputies from the different states for the special and sole purpose of entering into this investigation, and digesting a plan of supplying such defects as may be discovered to exist, will be entitled to a preference, from considerations which will occur without being particularized. Your commissioners decline an enumeration of those national circumstances on which their opinion respecting the propriety of a future convention with these enlarged powers is founded, as it would be an intrusion of facts and observations, most of which have been frequently the subject of public discussion, and none of which can have escaped the penetration of those to whom they would in this instance be addressed.

"They are, however, of a nature so serious, as, in the view of your commissioners, to render the situation of the United States delicate and critical, calling for an exertion of the united virtue and wisdom of all the members of the confederacy. Under this impression, your commissioners with the most respectful deference beg leave to suggest their unanimous conviction, that it may effectually tend to advance the interests of the union, if the states by which they have been respectively delegated would concur themselves, and use their endeavours to procure the concurrence of the other states, in the appointment of commissioners to meet at Philadelphia on the second Monday in May next, to take into consideration the situation of the United States, to devise such further provisions as shall appear to them necessary to render the constitution of the federal government *adequate to the exigencies of the union*, and to report such an act for that purpose to the United States in congress assembled, as, when agreed to by them

and afterwards confirmed by the legislature of every state, will effectually provide for the same.

"Though your commissioners could not with propriety address these observations and sentiments to any but the states they have the honour to represent, they have nevertheless concluded, from motives of respect, to transmit copies of this report to the United States in congress assembled, and to the executives of the other States."

The terms of this address were cautiously selected, so as to be in strict accordance with the thirteenth article of the confederation, while the latitude with which the object of the proposed convention is expressed, indicates Hamilton's determined purpose to establish a well-organized National Government.

CHAPTER XLIII.

It has been seen that the conferring on congress the power of levying a *national impost*, was the great dividing question on which the two parties that existed in America were arrayed. By the friends of a general and enlarged policy, or, as they were then styled, of "continental politics," this measure was regarded as one involving the fate of the country, for without such a power it was obvious that the confederation, feeble and inadequate as it had proved, could not be longer preserved. Its opponents were those who had coalesced, either from disappointment in not having acquired an influence in the general councils, from a desire to retain powers in the states that might be wielded for the gratification of their ambition, from an undefined or pretended apprehension of the dangers to their liberties which might result from so large a confidence as the control of the national funds, and in certain states from a calculation of the partial benefits to be derived from peculiar circumstances of more extensive territory, favourable position, and natural advantages. These lent themselves to the most absurd suspicions, deprecated any advance towards this great object as an approach to a gulf in which every vestige of liberty would be merged, and appealing to each narrow passion, the offspring of inconsiderateness, ignorance, or pride, gratified their vanity, and increased their influence, by being esteemed the zealous watchmen of liberty, and especial guardians of state rights. This party was the proper growth of the articles of confederation.

It had acquired a complete ascendency throughout the country, thus affording another proof that false principles, while they hasten decay in the system into which they enter, give a noxious vitality to the parasitic plants which flourish in the progress of its corruption.

That ascendency was inconsistent with the preservation of the Union; nor should we know from its effects at this time that the Union existed, but that the pageantry of a congress was still kept up. The members chosen to meet in November, seventeen hundred and eighty-five, did not assemble until February, seventeen hundred and eighty-six. Their first deliberations related to the finances. The report of a committee showed that the requisitions for the four preceding years a little exceeded seven millions of dollars; that the total receipts were rather more than one-third of this sum, of which less than one-tenth had been collected within the last fourteen months; that the means for discharging the interest on the foreign debt would have been inadequate, but for the unappropriated residue of the Dutch loan; that further loans could not be obtained; that the emission of bills of credit was hopeless; that the only remaining resource was the public lands—but public securities being receivable for them, they could only aid in reducing the public debt; and that, after the maturest consideration, they were unable to devise any other than the revenue system of seventeen hundred and eighty-three. It then proceeded to state, that seven states had complied with it in part; that Pennsylvania and Delaware had only granted it provisionally, and that Rhode Island, New-York, Maryland, and Georgia, had not decided in favour of any part of a system "so long since and so repeatedly presented for their adoption." It closed with the following impressive appeal:—"The committee observe with great concern that the security of the navigation and commerce of the citizens of these states from the Barbary powers; the pro-

tection of the frontier inhabitants from the savages; the immediate establishment of military magazines in different parts of the union, rendered indispensable by the principles of public safety; the maintenance of the federal government at home, and the support of the public servants abroad;—each and all depend upon the contributions of the states under the annual requisitions of congress. The moneys essentially necessary for these important objects will so far exceed the sums formerly collected from the states by taxes, that no hope can be indulged of being able from that source to make any remittances for the discharge of foreign engagements.

"Thus circumstanced, after the most solemn deliberation, and under the fullest conviction that the public embarrassments are such as above represented, and that they are daily increasing, the committee are of opinion that it has become the duty of congress to declare most explicitly that the crisis has arrived when the people of these United States, by whose will and for whose benefit the federal government was instituted, must decide whether they will support their rank as a nation by maintaining the public faith at home and abroad, or whether, for want of timely exertion in establishing a general revenue, and thereby giving strength to the confederacy, they will hazard, not only the existence of the union, but of those great and invaluable privileges for which they have so arduously and so honourably contended."

This strong language was followed by resolutions, in which, to efface the erroneous impressions produced by Jefferson's scheme of counterbalancing deficiencies, and "in order that congress may remain wholly acquitted from every imputation of a want of attention to the interests and welfare of those whom they represent," they declare—First, that the requisitions of seventeen hundred and eighty-four and eighty-five, cannot be considered as the

establishment of a system of general revenue in opposition to that recommended in seventeen hundred and eighty-three; second, they recommend to the delinquent states an accession to that system in all its parts; and last, proclaim, that whilst congress are denied the means of satisfying those engagements which they have constitutionally entered into for the common benefit of the union, they hold it their duty to warn their constituents that the most fatal evils will inevitably flow from a breach of public faith pledged by solemn contract, and a violation of those principles of justice which are the only solid basis of the honour and prosperity of nations."*

Although Pennsylvania and Delaware had not complied strictly with the system of seventeen hundred and eighty-three, it became apparent that the non-concurrence of New-York was the only serious obstacle to its establishment. Under these circumstances, the public attention in that state was wholly devoted to this subject.

A strong memorial to the legislature from the pen of Hamilton was widely circulated. It stated, "that the community had seen with peculiar regret the delay which had hitherto attended the adoption of the revenue system; that the anxiety which they had all along felt from motives of a more general nature, is at the present juncture increased by this particular consideration, that the state of New-York now stands almost alone, in a non-compliance with a measure in which the sentiments and wishes of the union at large appear to unite, and by a further delay may render itself responsible for consequences too serious not to affect every considerate man; that all the considerations important to a state, all the motives of public honour, faith, reputation, interest, and safety, conspire to urge a compli-

* R. King was chairman of this committee, and it is to be presumed was the author of this important document.

ance with that measure—that government without revenue cannot subsist—that the mode provided in the confederation for supplying the treasury of the United States has in experiment been found inadequate—that any objection to it as a measure not warranted by the confederation is refuted by the thirteenth article, which provides that alterations may be made, if agreed to by congress and confirmed by the legislatures of each state; and the conduct of this state itself in adopting the proposed change of the eighth article is a precedent in which we find the principle reduced to practice, and affords a complete answer to every pretence of the revenue system being unconstitutional. That as to danger in vesting the United States with these funds, your memorialists consider their interests and liberties as not less safe in the hands of their fellow-citizens delegated to represent them for one year in congress, than in the hands of their fellow-citizens delegated to represent them for one, or four years, in the senate and assembly of this state"—"That government implies trust, and every government must be trusted so far as it is necessary to enable it to attain the ends for which it is instituted, without which must result insult and oppression from abroad, confusion and convulsion at home."

The public men throughout the state took an open stand on this question; the newspapers were filled with discussions of its merits,* and the elections turned solely on this point.

The head of the opposition was the governor, whose influence, after an administration of nine years, had become almost irresistible. In the southern district, though opposed by the commercial members of the community, whose

* The most noticed of the writings against the grant of the impost, were a series of numbers signed "Rough Hewer," of which the author was Abraham Yates, a member of the legislature and a zealous partisan of Clinton.

hopes had centred upon Hamilton; Clinton was supported by a combination of interests—by the most violent of the whigs, and the most violent of the tories, who had become zealous whigs. In the interior of the state his ascendency was limited only by the opposition of a few intelligent men on the eastern borders of the Hudson, guided by Chancellor Livingston, and by the active and unceasing exertions of General Schuyler in the northern and western districts, where he was yet recollected as their most energetic protector and enlightened friend.

To judge merely from the official communications of Clinton, the inference would be drawn, that though not a zealous champion, he was a decided friend to the federal system; but the measures which marked the policy of the state, and which were directed by him, indicated very different purposes.

In pursuance of the recommendation of congress, New-York, on the nineteenth of March, seventeen hundred and eighty-one, passed an act which, after granting the duties to that body, provided, "that they should be levied and collected in such manner and form, and under such pains, penalties, and regulations, *and by such officers, as congress should from time to time make, order, direct, and appoint.*"

Soon, however, after the indications of peace, the policy of the state changed. The act of seventeen hundred and eighty-one was repealed, and on the fifteenth March, seventeen hundred and eighty-three, a law was enacted granting the duties; but departing from the principles which had prompted this measure at its inception, and which prevailed during a period of danger, directed them to be collected *by the officers and under the authority of the state.* This law, combined with other circumstances, induced congress to recommend the system that was adopted on the eighteenth of March, seventeen hundred and eighty-

three, which yielded the appointment of the revenue officers to the states, but rendered them amenable to, and removable by, the United States* alone.

Early in the year seventeen hundred and eighty-four, a motion was made in the legislature of New-York, urging the abolition of the officers of superintendent of finance and of continental receiver, which was followed by the acts establishing a customhouse and a revenue system.

The immense and improvident speculations made on the return of peace, poured into the coffers of that state a large revenue. This was subsequently increased by the navigation acts of other states, which rendered New-York the entrepot of the whole region east of the Delaware, and presented to her tempting prospects of future wealth. Blinded by these adventitious circumstances to the superior advantages to be derived from the general prosperity of the whole union, the idea of state aggrandizement engrossed the thoughts of Clinton, who, had the desire of establishing a separate government ever conflicted in his mind with a more comprehensive patriotism, would have regarded this as the great source of influence and power.

To whatever cause it may be attributed, it became the settled policy of New-York to defeat the proposition for a national revenue. A measure conforming with the recommendation of congress was proposed in the legislature in seventeen hundred and eighty-four, and failed. It was

* In a letter to Hamilton, Schuyler remarks, May 4th, 1783: "Although our legislature seems still inclined to confer powers on congress adequate to the proper discharge of the great duties of the sovereign council of these states, yet I perceive with pain that some, chagrined at disappointment, are already attempting to inculcate a contrary principle, and I fear it will gain too deep a root to be eradicated, until such confusion prevails as will make men deeply feel the necessity of not retaining so much sovereignty in the states individually."

again brought forward in seventeen hundred and eighty-five, and again failed by two votes in the senate.

At the close of the session of seventeen hundred and eighty-six, in which the exertions of Schuyler to induce the grant were most conspicuous, a law was enacted giving the revenue to congress, but reserving to the state "the sole power of levying and collecting" the duties; the conferring of which power on congress, was an indispensable and express condition of the acts of some of the other states. Instead of making the collectors amenable, and removable by congress, it subjected them to the exclusive jurisdiction of the state courts.*

It also rendered the duties payable in the bills of credit of the state, and thus so entirely contravened the plan of seventeen hundred and eighty-three, as to be equivalent to its rejection. This enactment was defended by the argument that congress, being a single body, and consequently without checks, would be apt to misapply the money arising from it.

All hope had, in the mean time, centred in this question; and palsied for the want of resources, congress is seen debating Indian treaties, consulting measures to suppress their hostilities, discussing the inquiry whether a member could, without permission from that body or from his state withdraw from his seat, and suspending all action, waiting the decision of New-York.*

* The confederation required nine states to form a quorum for every essential purpose. Each state had one vote—no state could be represented by less than two members. The withdrawal therefore of a member could suspend its functions, and yet *New-York*, Maryland, and Virginia, affirmed the absolute right to withdraw, and New-Hampshire, Rhode Island, Connecticut, and Georgia were divided. *For the right*—William Grayson, John Haring, Harrison, Henry, Hindman, Houston, Livermore, Miller, Mitchell, *James Monroe*, *Melancton Smith*; against it—*Bayard*, Bloodworth, *Dane*, Few, N. Gorham, Hornblower, *Dl. Huger*, *William Samuel Johnston*, *Rufus King*, Lee, Long, Manning, Parker, Petit, Charles Pinckney, *Sedgwick*, Symmes, White.

Perceiving that no benefit could be derived from the law recently passed by this state; that if acceded to, the acts of twelve adopting states (for Rhode Island had meanwhile concurred) would, by their conditions, which required the concurrence of all the states, become void; that the provision which rendered the duties payable in bills of credit was most pernicious, as it would, on the same principle, admit all the paper money of the other states at various rates of depreciation, thus reducing the revenue, producing an inequality in the public burdens, and deterring the states averse from paper money from engaging in the measure—congress treated it as a nullity.

Feeling deeply their humiliating condition in being unable to meet the claims of foreigners who had advanced money to prosecute the war, and to discharge the *interest* on the foreign debt without new loans in Europe, and thereby compounding it, they passed a resolution requesting Governor Clinton to convene the legislature for the purpose of submitting this subject again to its consideration. To this application, involving such momentous consequences, Clinton replied by letter, stating that "he entertained the highest deference and respect for the authority of congress, and that it would afford him the greatest pleasure to have it in his power to comply with their recommendations, but that he had not the power to convene the legislature before the time fixed by law for their stated meeting, except upon '*extraordinary occasions*,' and as the present business had already been particularly laid before them, and so recently as at their last session received their determination, it cannot come within that description."

Soon after receiving this communication, congress then sitting at New-York, adopted a series of resolutions, declaring that the act of New-York was not a compliance with the general plan. "That the present critical and em-

barrassed state of the finances was such as to require that the system of impost should be carried into immediate effect; that they consider this 'an occasion sufficiently important and extraordinary' for the convening of the legislature, and 'earnestly' recommend that it should be 'immediately' called." Clinton was immovable. This earnest and solemn appeal of the confederacy was disregarded, and the hope of establishing a general revenue was almost abandoned.

While the dignity of the nation was thus prostrated before the executive of a single state, difficulties, the consequences of recent example, were pending with several others. New-Jersey, wearied with fruitless efforts to inculcate the benefits of a national system, and jealous of the commercial prosperity of New-York, early in this year had resorted to decisive measures. She passed a resolution (reciting as a reason for it the delinquency of other states) by which she refused a compliance with the requisition of congress for her quota, "until all the states in the union had complied with the revenue system of seventeen hundred and eighty-three, or until states having peculiar commercial advantages should forbear a system of partial legislation." This formidable decision alarmed the nation, and demanded the immediate attention of congress, who sent a deputation to remonstrate with that state. After an able address from each of the delegates, showing the necessity of union to the general happiness of all its members, but especially to the smaller states, the legislature rescinded their resolution, but declared that the requisition had no binding force.

Pennsylvania claimed a set-off against part of her quota, and a committee was appointed to confer with her legislature. A similar claim was, after much debate, conceded to South Carolina. Another committee was directed to repair to Connecticut, New-Jersey, and North Carolina,

and an address was made to New-Hampshire and Maryland, urging upon them a full and immediate compliance with the last requisition. Was this a government?

These obstacles indicated the necessity of an adjustment of accounts with the several states, and an ordinance was framed for that purpose. Another ordinance before recommended was passed, of much *prospective* importance. It was for the establishment of a mint; the standard of gold and silver, and the money of account in a decimal ratio, having been previously fixed.

While congress were thus engaged, the insurrection of Massachusetts broke upon them. After much delay, they, in secret session, made a report strongly indicative of their feebleness and their fears. Having stated that unless speedy and effectual measures were taken to suppress the designs of the insurgents, they will possess themselves of the arsenal at Springfield, subvert the government, and not only reduce that commonwealth to a state of anarchy and confusion, but probably involve the United States in the calamity of a civil war; it declared their obligations to restore the authority of the state, and to protect the public property, and that for these purposes a body of troops should be immediately raised, but that the causes of raising them ought not to be publicly assigned, and that they had, in a separate report, on the intelligence from the western country, recommended the augmentation of the troops in the service of the United States. By this report a legionary corps was ordered to be enlisted for three years, principally in New-England.

Thus did an emergency, which every government should have been empowered to meet, drive congress to a usurpation upon a false pretext; for where is to be found the authority in the articles of the confederation to raise a military force for such a purpose, and what was there to prevent an increase of its number, and its permanent existence?

The only security against this usurpation of power was the want of means; but this want involved the very danger, for, while acting upon the necessity of the measure, congress declared, "that in the present embarrassments of the federal finances, they would not *hazard* the *perilous* step of putting arms into the hands of men, whose fidelity must in some degree depend on the faithful payment of their wages, had they not the fullest confidence, from authentic and respectable information, in the most liberal exertions of the money-holders in the state of Massachusetts and the other states, in filling the loans authorized" for that purpose.

The suppression of the insurrection by her own militia, leaves it only a subject for speculation what would have been the consequences of an invasion, by the confederacy, of so populous, so warlike, and then so jealous a state.

The friends of the union in New-York had in the mean time determined to make another and a final effort. The popularity of Hamilton, it was hoped, might have influence; and while General Schuyler was brought forward as a candidate for the senate, Hamilton was put in nomination for the assembly. His election was earnestly opposed—opposed by the men whose cupidity he had exposed in seventeen hundred and eighty-four, and who, identified with the state policy of Clinton, as leaders of the democratic party, regarded him as a formidable adversary to their narrow and selfish politics. But serious apprehensions had seized the community as to the future. They saw in the discords and the weakness of the confederacy the fulfilment of all his prophecies, and they looked to him as their last hope of changing the vicious direction which had been given to the councils of the state. He was elected.*

* On the eve of this election a letter was received by him from a tory merchant, asking his influence to obtain legislative relief. In his reply he states

The legislature opened its session in January, seventeen hundred and eighty-seven, at the city of New-York. The speech from the governor, after alluding to the annual appointment of state officers, from which so large a share of his influence was derived, adverted to the requisitions for the service of the year, and stated his confidence that the dispositions of the legislature being truly federal, would induce a speedy compliance with a measure so essential to the national support and credit. The representatives were informed of the resolutions of congress, expressing their sense of the act granting the impost, and requesting an immediate call of the legislature, whereby the revenue system of seventeen hundred and eighty-three would be brought to their view—"a subject which had been repeatedly submitted to them, and must be well understood."

The correspondence which had recently passed on that subject was laid before them, with a declaration, "that a regard to their excellent constitution, and an anxiety to preserve unimpaired the right of free deliberation in matters not stipulated by the confederation, had restrained him from convening them at an earlier period." The ad-

"that he would not be understood to declare any opinion concerning the principles of the bill;" and remarks, "I make this observation from that spirit of candour which I hope will always direct my conduct. I am aware that I have been represented as an enemy to the wishes of what you call your corps. If by this is meant that I do not feel as much as any man not immediately interested for the distresses of those merchants who have been in a great measure the victims of the revolution, the supposition does not do justice either to my head or my heart. But if it means that I have always viewed the mode of relieving them as a matter of peculiar delicacy and difficulty, it is well founded.

"I should have thought it unnecessary to enter into this explanation, were it not that I am held up as a candidate at the ensuing election, and would not wish that the step I have taken in respect to your letter should be considered as implying more than it does, for I would never wish to conciliate at the expense of candour; on the other hand, I confide in your liberality not to infer more than I intend from the explanation I have given you."

justment of the territorial controversies with Massachusetts and Pennsylvania was mentioned, and the speech concluded by calling the attention of the legislature to local topics.

The address in reply to the speech was referred to a committee, of which Hamilton was a member, and was reported by him. It was a mere echo of the speech on all subjects, except as to the request of congress to convene the legislature, which was passed by in silence. On being reported to the house, a motion was made by the speaker to amend it, by expressing their approbation of the governor's conduct in not convening the legislature at an earlier period than that fixed by law; he at the same time disclaiming all hostility to the impost. This motion produced the effect which had been sought to be avoided, and called up a long and vehement debate. While the friends of the Union expressed in general terms a dissent from the views of the governor, feeling themselves in a minority, they sedulously endeavoured to prevent all discussion of this topic, seeing that it had been thrown in as an apple of discord; but the friends of the governor, who were guided with an adroit and subtle policy, seized upon this occasion to kindle an excitement, and to rouse all the hostile feelings of the states rights party.

The speaker then proposed to withdraw the motion, but it was insisted that it could not be withdrawn. That no ill consequences could arise from a decision; that it was only a question whether there was such a pressing necessity as to authorize the governor to convene the legislature. That if the doctrine that the governor was bound to comply with a requisition of congress on this subject was sustained, it was impossible to tell where it would end. That congress might, by repeated requisitions, perhaps once a month, tease and weary the legislature into a compliance with their measures; an apprehension not exaggerated, for such had been the practice of the former government.

Several propositions were made to get rid of the motion for an amendment, and it was at last agreed that the committee should rise and report; Colonel Hamilton stating, "that he would reserve himself on this subject until it came again before them, when he hoped to be enabled to offer such arguments as would strike with conviction the candid part of the house."

This question was brought forward on the nineteenth of January, when an amendment was proposed by General Malcolm, as a substitute for that of the speaker, the object of which was to avoid a direct expression of opinion as to the governor's conduct, and to place his justification on the ground of the extraordinary expense an extra session would have produced. This amendment was resisted with great ingenuity and art. An attempt was made to show that silence would be in effect a censure upon the governor, while approbation of his conduct did not necessarily reflect upon that of congress,—that this motion was in reality an attempt to debar them from the right of declaring their sentiments; and the house was asked whether, if it was necessary, they were afraid to justify their governor?

A comparison was drawn between the former and present government, and an absurd analogy sought to be shown to the attempt of the British government to levy ship-money, which was finally and effectually resisted by the English commons. It was contended that if to the right of making peace and war, of raising fleets and armies, was superadded that of convening at pleasure the state legislatures, and of exercising such a prerogative, the issue no man could foretell;—that congress was an irresponsible body, and that the governor was accountable to the state;—that this was not the "extraordinary occasion" contemplated by the constitution; and as they were now ready to approve the governor's conduct, they should have been

as ready, had his course been different, to have censured it.

The question was then called as to the substitute, when Hamilton, who had previously spoken on the point of order, arose. This body was, with few exceptions, composed of respectable individuals, who had enjoyed small advantages of education, and who regarded with jealousy all oratorical embellishment. Having previously felt its pulse, and only anxious to carry this great measure, on the right decision of which such vast consequences depended, Hamilton conformed his effort to the character of the assembly, and addressed them in the following conciliatory and moderate tone. After a few preliminary observations, he proceeded to remark:*

"This now leads us to examine the important question presented to us by the proposed amendment. For my own part, I have seen with regret the progress of this business, and it was my earnest wish to have avoided the present discussion. I saw with regret the first application of congress to the governor, because it was easy to perceive that it involved a delicate dilemma. Either the governor, from considerations of inconvenience, might refuse to call the assembly, which would derogate from the respect due to congress; or he might call them, and by being brought together at an unreasonable period, before the time appointed by law for the purpose, they would meet with reluctance, and perhaps with a disposition less favourable than might be wished to the views of congress themselves. I saw with equal regret the next step of the business. If a conference had been desired with congress, it might have been had—circumstances might have been explained, rea-

* All of these speeches are reported by Childs, the reporter of the debates in the New-York convention. They are very imperfect, and very often in the language the reporter would himself have used

sons might have been assigned satisfactory to them for not calling the legislature. The affair might have been compromised. But instead of this, the governor thought proper to answer by a flat denial, founded on a constitutional impediment, and an idea of the invasion of the right of free deliberation was brought into view. I earnestly wished the matter to have rested here. I might appeal to gentlemen in this house, and particularly to the honourable member who is so zealous in support of the amendment, that before the speech appeared, I discovered a solicitude that by passing the subject over in silence, it might not give occasion to the present discussion. It however came before us in a form very different from that which I should have thought advisable, for there was no need of an appeal to the legislature. The next step was to appoint a committee to prepare an answer to the speech. It fell to my lot to be a member of that committee; my object still was to avoid the interference of this house in a matter about which there was a difference of opinion between the United States and the governor of this state on constitutional ground. The best way to effect this, was to frame the answer in the most general terms. This was done; not a word is said *even* about the revenue system, which occasioned the request of congress to convene the legislature. The answer is generally, that the house will take into consideration the different acts of congress, and make such provisions as appear to them compatible with the abilities and constitution of the state. By not touching at all on the topic connected with the origin of the controversy, I thought we might safely be silent without any implication of censure on the governor. It was neither my wish to condemn nor to approve. I was only desirous of avoiding an interference in a constitutional question, which belonged entirely to the province of the executive authority of the state, and about which I knew there would be a differ-

ence of opinion, even in this house. I submit it to the house, whether this was not a prudent course, and whether it is not to be lamented that the proposed amendment forces the discussion upon us. Constitutional questions are always delicate; they should never be touched but from necessity.

"But though I shall be readily acquitted of having had any agency in bringing the house into this disagreeable situation, since the question is brought forward, I shall with freedom meet the discussion. This my duty demands from me; and whoever may be affected by it, I shall proceed under an impression that my constituents expect from me the free exercise of my judgment, and the free declaration of my sentiments on the matters deliberated upon in this house.

"The question by the honourable member on my right, has been wrongly stated. He says it is this—whether a request of congress to convene the legislature is *conclusive* upon the governor of the state, or whether a bare intimation of that honourable body lays him under a constitutional necessity of convening the legislature? But this is not the true question. From the shape in which the business comes before us, the inquiry truly is—whether a solemn application of the United States to the executive of this state to convene the legislature for the purpose of deliberating on a matter which is considered by that body as of essential importance to the nation, and which has been viewed in a similar light by most of the other states individually, is such an extraordinary occasion as left the governor under no *constitutional impediment* to a compliance? and it may be added, whether that application, under all the circumstances, was an attempt to invade the freedom of deliberation in this house?

"Here let me ask, what does the constitution say upon the subject? Simply this—that the governor 'shall have

power to convene the assembly and senate on extraordinary occasions.'

"But what is an extraordinary occasion? what circumstances are to concur, what ingredients combine, to constitute one? What general rule can be imagined by which to define the precise meaning of these vague terms, and draw the line between an ordinary and an extraordinary occasion? Will the gentleman on my right furnish us with such a criterion? Profoundly skilled as he is in law, (at least in the local laws of this state,) I fancy it will be difficult for him to invent one that will suit his present purpose. Let him consult his law books: they will not relieve his embarrassment. It is easy to see the clause allows the greatest latitude to opinion. What one may think a very extraordinary occasion, another may think a very ordinary one, according to his bias, his interest, or his intellect. If there is any rule at all, it is this—the governor shall not call the legislature with a view to the ordinary details of the state administration. Whatever does not fall within this description, and has any pretensions to national importance in any view, leaves him at liberty to exercise the discretion vested in him by the constitution. There is, at least, no constitutional bar in the way.

"The United States are intrusted with the management of the general concerns and interests of the community—they have the power of war and peace, they have the power of treaty.

"Our affairs with respect to foreign nations are left to their direction. We must entertain very diminutive ideas of the government of the Union, to conceive that their earnest call on a subject which they deem of great national magnitude, which affects their engagements with two respectable foreign powers, France and the United Netherlands, which relates to the preservation of their faith at home and abroad, is not such an occasion as would justify

the executive, upon the terms of the constitution, in convening the legislature. If this doctrine is maintained where will it lead to—what kind of emergency must exist before the constitution will authorize the governor to call the legislature? Is the preservation of our national faith a matter of such trivial moment? Is the fulfilment of the public engagements domestic and foreign of no consequence? Must we wait for the fleets of the United Netherlands or of France to enforce the observance of them, before the executive will be at liberty to give the legislature an opportunity of deliberating on the means of their just demands? This is straining the indefinite words of the constitution to a most unreasonable extreme. It would be a tenable position to say that the call of the United States is alone sufficient to satisfy the idea of an extraordinary occasion. It is easy to conceive, that such a posture of European affairs might exist, as would render it necessary to convene the different legislatures to adopt measures for the public safety, and at the same time inexpedient to disclose the object till they were assembled. Will we say that congress would be bound to communicate the object of their call to the executive of every state? or that the executive of this state, in complying with their request, would be guilty of a violation of the constitution? But the present case is not that of a mere general request; it is specifically to deliberate upon an object of acknowledged importance in one view or another. On one hand it is alleged to be a measure essential to the honour, interest, and perhaps the existence of the union; on the other, it is said to be on principles subversive of the constitution and dangerous to the liberty of the subject. It is, therefore, a matter of delicacy and moment, and the earnest call of the union to have it considered cannot fall within the notion of so common, so ordinary an occasion, as would *prohibit* the executive from summoning a meeting

of the legislature. The only argument urged to denominate it such, is that it had been recently decided on by the legislature. But there is an evident fallacy in this position; the call was addressed to a new and different body, *totally different* in the contemplation of the constitution, and *materially* different in fact with respect to the members who compose it. A large proportion of the members of the present house were not members of the last. For aught that either congress or the governor could officially know, there might have been a total change in the individuals, and, therefore, a total difference in the sentiments. No inference, of course, could be fairly drawn from the conduct of the last legislature to that of the present. Indeed, however it might be wished to prepossess the minds of the members of the former house with a contrary idea, it is plain that there is no necessary connection between what they did at that time, and what it may be proper for them to do now. The act of the last session proves the conviction of the house then, that the grant of the impost was an eligible measure. Many of the members were led to suppose that it would answer the purpose, and might have been accepted by congress. If the experiment has shown that they were mistaken in their expectations, and if it should appear to them that congress could not for good reasons accept it, the same motives which induce them to the grant already made, would determine them to consent to such alterations as would accommodate it to the views of congress and the other states, and make it practicable to carry the system into execution.

"It may be observed, that as congress accompanied their request with an explanation of the object, they by that mode of proceeding submitted the whole matter to the discretion of the governor, to act according to the estimate formed in his own mind of its importance. It is not denied the governor had a discretion upon the occasion.

It is not contended, that he was under a constitutional necessity to convene the legislature. The resolution of congress itself does not imply or intimate this. They do not pretend to require, they only earnestly recommend. The governor might at his peril refuse; responsible, however, for any ill consequences that might have attended his refusal. But what is contended for is, that the call of the United States, under all circumstances, was sufficient to satisfy the terms of the constitution empowering him to convene the legislature on extraordinary occasions, and left him at full liberty to comply.

"The admission of his discretion does not admit that it was properly exercised, nor does it admit that the footing upon which he placed his refusal was proper. It does not admit that the constitution interposed an obstacle in his way, or that the request of congress implied any thing hostile to the right of free deliberation.

"This is the aspect under which the business presents itself to our consideration, as well from the correspondence between congress and the governor, as from the manner in which it is ushered to us in the speech. A general approbation of his conduct, is an approbation of the principle by which it is professed to have been actuated.

"Are we ready to say that the constitution would have been violated by a compliance? Are we ready to say that the call upon us to *deliberate* is an attempt to infringe the *freedom of deliberation?* If we are not ready to say both, we must reject the amendment. In particular, I think it must strike us all that there is something singularly forced in intimating, that an application of congress to the governor of the state to convene a new legislature to consider a very important national subject, has any thing in it dangerous to the freedom of our deliberations. I flatter myself we should all have felt ourselves as much at liberty to have pursued our sentiments, if we had met upon an ex-

traordinary call, as we now do when met according to our own appointment.

"There yet remains an important light in which the subject merits consideration; I mean as it respects the executive authority of the state itself. By deciding that the application of congress, upon which the debate turns, was not such an extraordinary occasion as left the governor at liberty to call the legislature, we may form a precedent of a very dangerous tendency; we may put a sense on the constitution very different from the true meaning of it, and may fetter the present or a future executive with very inconvenient restraints. A few more such precedents may tie up the hands of a governor in such a manner as would either oblige him to act at an extreme peril, or to omit acting when public exigencies required it. The mere sense of one governor would be no precedent for his successor; but that sense approved by both houses of the legislature, would become a rule of conduct. Suppose a few more precedents of the kind on different combinations of circumstances equally strong, and let us ask ourselves what would be the situation of a governor whenever he came to deliberate on the propriety of exercising the discretion in this respect vested in him by the constitution? Would he not be apt to act with a degree of caution, or rather timidity, which in certain emergencies might be productive of very pernicious consequences? A mere intimation of the constitution to him not to call the legislature in their recess upon every *trifling affair*, which is its true import, would be turned into an injunction not to do so but upon occasions of the *last necessity*.

"We see, therefore, that the question upon which we are pressed to decide, is not less delicate, as it respects the constitution of the state itself, than as it respects the union; and that in every possible view it is most prudent to avoid the determination. Let the conduct of the governor stand

on its own merits. If he was right, our approbation will not make him more right. If he was wrong, it would be improper to give sanction to his error.

"Several things have been said in the debate which have no connection with it; but to prevent their making improper impressions, it may not be amiss to take some notice of them. The danger of a power in congress to compel the convening of the legislature at their pleasure has been strongly insisted upon. It has been urged, if they possessed it they might make it an engine to fatigue the legislature into a compliance with their measures. Instances of an abuse of the like power in the crown, under the former government, have been cited.

"It is a sufficient answer to all this to say, that no such power is contended for. I do not assert that their request *obliged* the governor to convene the legislature; I only maintain that their request on an important national subject, was such an occasion as left him at liberty to do it without any colour for imputing to him a breach of the constitution; and that from motives of respect to the union, and to avoid any further degradation of its authority, already at too low an ebb, he ought to have complied.

"Admitting in the fullest extent that it would be dangerous to allow to congress the power of requiring the legislature to be convened at pleasure, yet no injury or inconvenience can result from supposing the call of the United States, on a matter by them deemed of importance, to be an occasion sufficiently extraordinary to *authorize*, not to *oblige* the governor to comply with it.

"I cannot forbear remarking, that it is a common artifice to insinuate a resemblance between the king under the former government and congress; though no two things can be more unlike each other. Nothing can be more dissimilar than a monarch, permanent, hereditary, the source of honour and emolument, and a republican body com-

posed of a number of individuals appointed annually, liable to be recalled within the year, and subject to a continual rotation; which, with few exceptions, is the fountain neither of honour nor emolument. If we will exercise our judgments, we shall readily see no such resemblance exists, and that all inferences deduced from the comparison must be false.

"Upon every occasion, however foreign such observations may be, we hear a loud cry raised about the danger of intrusting power to congress; we are told it is dangerous to trust power any where; that power is *liable* to abuse, with a variety of trite maxims of the same kind. General propositions of this nature are easily framed, the truth of which cannot be denied, but they rarely convey any precise idea. To these we might oppose other propositions equally true, and equally indefinite. It might be said that too little power is as dangerous as too much; that it leads to anarchy, and from anarchy to despotism. But the question still recurs, what is too much or too little? Where is the measure or standard to ascertain the happy mean?

"Powers must be granted, or civil society cannot exist: the possibility of abuse is no argument against the thing; this possibility is incident to every species of power, however placed or modified. The United States, for instance, have the power of war and peace. It cannot be disputed that conjunctures might occur, in which that power might be turned against the rights of the citizens; but where can we better place it—in short, where else can we place it at all?

"In our state constitution we might discover power liable to be abused to very dangerous purposes. I shall instance only the council of appointment. In that council the governor claims and exercises the power of nominating to all offices. This power of nomination, in its operation,

amounts to a power of appointment; for it can always be so managed as to bring in persons agreeable to him, and exclude all others. Suppose a governor disposed to make this an instrument of personal influence and aggrandizement—suppose him inclined to exclude from office all independent men, and to fill the different departments of the state with persons devoted to himself—what is to hinder him from doing it? who can say how far the influence arising from such a prerogative might be carried? Perhaps this power, if closely inspected, is a more proper subject of republican jealousy than any power possessed or asked by congress, fluctuating and variable as that body is.

"But as my intention is not to instil any unnecessary jealousies, I shall prosecute these observations no further. They are only urged to show the imperfections of human institutions, and to confirm the principle, that the possibility of a power being abused, is no argument against its existence.

"Upon the whole, let us venture with caution upon constitutional ground. Let us not court nor invite discussions of this kind. Let us not endeavour still more to weaken and degrade the federal government, by heaping fresh marks of contempt on its authority. Perhaps the time is not far remote, when we may be inclined to disapprove what we now seem eager to commend, and may wish we had cherished the union with as much zeal as we now discover apprehension of its encroachments.

"I hope the house will not agree to the amendment. In saying this, I am influenced by no other motive than a sense of duty. I trust my conduct will be considered in this light. I cannot give my consent to put any thing upon our minutes which, it appears to me, we may one day have occasion to wish obliterated from them."

The opposition was again called up, and travelled over the same ground; inveighed against the dangers of an in-

croachment on the rights of the people; justified fully the conduct of the governor; declared that the decision of the constitutional question was not necessarily involved, and closed with a strong appeal to popular feeling on the dangers to be apprehended from countenancing such an invasion of the freedom of their deliberations.

Hamilton replied; indicated more clearly the fallacy of the arguments which had been used; pointed out the true construction of the language of the constitution; warned the house of the folly and danger of this distrust of the powers of congress, and ridiculed the attempt to draw an analogy between its powers and those of a monarchy. "Are we not," he asked, "to respect federal decisions? are we on the contrary to take every opportunity of holding up their resolutions and requests in a contemptible and insignificant light, and tell the world their calls, their requests are nothing to us; that we are bound by none of their measures? Do not let us add to their embarrassments, for it is but a slender tie that at present holds us. You see, alas! what contempt we are falling into since the peace; you see to what our commerce is exposed on every side; you see us the laughing-stock, the sport of foreign nations. And what may this lead to? I dread, sir, to think. Little will it avail then to say, we could not attend to your wise and earnest requests without inconvenience: little will it avail to say, it would have injured individual interests to have left our farms. These things are trifling when compared to bringing the councils and powers of the union into universal contempt, by saying their call was unimportant, and that it did not come under the indefinite meaning of '*extraordinary*. *See*, gentlemen, before you may *feel*, what may be your situation hereafter. There is more involved in this measure than presents itself to your view.

"You hear it rung in your ears that, from the resemblance between the king and the congress of these states

it would be dangerous to come into measures proposed by them, and adopted by every state but this. But I say there is no danger; it is impossible; the constitution, the confederation, prevents it. Let us hear the reasoning used;—they have the power of declaring war and peace, and request the power of raising and applying money. This, if in a king, permanent, hereditary, and independent of the people, would be danger; but in an annual body chosen from ourselves, and liable on every turn of popular breath to be changed, who are checked by twelve other states, who would not stand by and see the ruin of their associates, as it would involve their own,—where can be the danger? How can a similitude exist between bodies so different—as different as east from west, as north from south? I regret that these things should be compared, for there is no necessity for sounding this alarm. It is enough the danger of republican governments that their very nature tends to their destruction, because of their liability to change."

The question was then taken, and such was the force of the governor's party, that the conciliatory substitute was rejected by a vote of thirty-six to nine.

A few days after the address was adopted, this irritating topic being disposed of, the friends of the impost, however inauspicious the prospect, indulged the hope that the exigencies of the country might induce a compliance with a measure which had been at this time sanctioned by all of the other states, and that notwithstanding the views of the opposition, when the final vote was taken, they would shrink from the responsibility of placing the state in an attitude so hostile to the confederation and leading to consequences so portentous.

A motion was made for a reference of this subject to a committee, according to the usual practice of the house, but the speaker having avowed himself a friend of the

measure, and it being apprehended that the report of a committee favourable to the impost might have weight with the house, an attempt was made to defeat this motion and to refer the subject to a committee of the whole house. This design was defeated, and a committee was appointed to investigate the subject. While under its consideration, Hamilton moved a reference of the laws apparently contravening the treaty: one, relative to debts due to persons within the enemy's lines; the other, the much agitated "Trespass act:" taking as the basis of this motion the letter of the secretary of foreign affairs, and the communications of the British government in relation to its violation. Of this committee he was appointed chairman, and he introduced a bill after a speech indicating the importance of this measure to the state, and her obligation to remove all impediments to the foreign negotiations.

The following is a brief outline of his remarks upon this subject: He first expressed great uneasiness that any opposition should be made to this bill, particularly as this state was individually interested therein. He felt greater regret from a conviction in his own mind on this occasion, that the bill should be objected to, as there was not a single law in existence in this state in direct contravention of the treaty of peace. He urged the committee to pass the bill, from the consideration that the state of New-York was the only state to gain any thing by a strict adherence to the treaty.

There was no other state in the union that had so much to expect from it. The restoration of the western posts was an object of more than one hundred thousand pounds per annum. Great Britain held those posts on the plea that the United States had not fulfilled the treaty, and which we have strong assurances she will relinquish on the fulfilment of our engagements with her. But how far Great Britain might be sincere in her declaration was unknown.

Indeed he doubted it himself. But while he doubted the sincerity of Great Britain, he could not but be of opinion that it was the duty of this state to enact a law for the repeal of all laws which may be against the treaty, as by do ing away all exceptions she would be reduced to a crisis; she would be obliged to show to the world whether she was in earnest or not, and whether she will sacrifice her honour and reputation to her interest. With respect to the bill, as it was drafted in conformity with the recommendation of congress, he viewed it as a wise and salutary measure; one calculated to meet the approbation of the different states, and most likely to answer the end proposed. Were it possible to examine an intricate maze of laws, and to determine which of them or what parts of those laws were opposed to the treaty, it still might not have the intended effect, as different parties would have the judging of the matter. What one would say was a law not inconsistent with the treaty of peace, another might say was so, and there would be no end, no decision of the business. Even some of the states might view laws in a different manner. The only way to comply with the treaty, was to make a general and unexceptionable repeal. Congress, with an eye to this, had proposed a general law, from which the one before them was a copy. He thought, as it was obvious to every member of the committee, that as there was no law in direct opposition to the treaty, no difficulty could arise from passing the bill.

Some gentlemen, he observed, were apprehensive that the bill would restore confiscated estates. This he did not admit. However, if they were so disposed, they might add a proviso to prevent it. He had written one, which any of the gentlemen might move, if they thought necessary. In his opinion it was not necessary. The bill only provided that no future confiscations should take place, and that congress should *earnestly recommend* a

restoration of property. But there was nothing obligatory in this.

If this state should not come into the measure, would it not be a very good plea for the other states to favour their own citizens, and say, why should we do thus, when New-York, the most interested of any of the states, refuses to adopt it? And shall we suffer this imputation, when we have in fact no laws that militate against the treaty?

He stated the great disadvantages that our merchants experienced from the western posts being in the hands of the British, and asked if it was good policy to let them remain so.

It had been said that the judges would have too much power. That was a misapprehension. He stated the powers of the judges with great clearness and precision. He insisted that their powers would be the same whether these laws passed or not; for as all treaties were known by the constitution as the laws of the land, so must the judges act on them, any law to the contrary notwithstanding.

Cicero, the great Roman orator and lawyer, lays it down as a rule, that when two laws clash, that which relates to the most important matters ought to be preferred. If this rule prevail, who can doubt what would be the conduct of the judges, should any laws exist inconsistent with the treaty of peace? But it would be impolitic to leave them to the dilemma either of infringing the treaty to enforce the particular laws of the state, or to explain away the laws of the state to give effect to the treaty.

He declared that the full operation of the bill would be no more than merely to declare the treaty the law of the land; and that the judges viewing it as such, shall do away all laws that may appear in direct contravention of it. Treaties were known constitutionally to be the law of the land, and why be afraid to leave the interpretation of those

laws to the judges. The constitution knows them as the interpreters of the law. He asked if there was any member of the committee who would be willing to see the first treaty of peace ever made by this country violated? This he did not believe. He could not think that any member on that floor harboured such sentiments. He was in hopes that the committee would agree with him in opin ion, and give a proof of their attachment to our national engagements by passing the bill, which would do away every exception of the British court." This exposition overcame every objection, and this important act passed the house, but fell in the senate.

CHAPTER XLIV.

At the commencement of the session he was appointed chairman of the committee on expiring laws, to report which should be continued, and also such new laws as they should conceive would be beneficial to the state. In the performance of this duty his mind was directed to a great variety of topics. The first matter of local interest which called forth his exertions, was an "act to regulate the elections" of the state. This act not only involved several important principles, but had a special bearing on its political character. Its details have not enough of general interest to warrant their introduction in this place. It is sufficient to remark the singular inconsistency evinced on this occasion in the conduct of the opponents to the power of the general government, who claimed the exclusive merit of protecting the liberties of the state.

On questions which arose involving the highest constitutional principles, while Hamilton and his friends were foremost in resisting all attempts to explain away the state constitution, and to abridge the freedom of elections, and were endeavouring to maintain a complete and full toleration of religious opinions, the state party was found advocating measures tending to the most dangerous consequences. They opposed a mere request of congress for conve-

ning the legislature of the state, as threatening danger to the freedom of deliberation, and they proposed a test not sanctioned by its constitution. They refused a grant of power necessary to the existence of the union, as dangerous to the liberties of the people; and they sought to violate the constitution of their state, by restraining the free exercise of the right of suffrage—the first principle of all free institutions—the sovereignty of the people.

One proposition was to enable the inspectors of the elections to take aside every illiterate person, and examine him privately, respecting his ballot. Against this, Hamilton took a decided stand, showing the danger of an improper influence being exercised, and the probability that the leaning of the inspectors would produce an improper bias; contending that "it was better that the illiterate should take the chance of imposition from parties equally active, than to leave them subject to party views, concentred in inspectors, upon whom the fate of the election depended. That it was wholly contrary to the very genius and intention of balloting, which means, that a man's vote should be secret, and known only to himself; but by this proviso he was not merely permitted, he was obliged to discover his vote, thus depriving the unlettered person of that liberty which his more instructed fellow-citizen had secured to him. These reasons, he hoped, would be deemed sufficient to induce the house to reject the clause, as repugnant to the genius and liberty of our republic." He prevailed.

Another clause authorized the inspectors to impose an oath of abjuration of ecclesiastical as well as civil obedience, which was defended by the leader of the democratic party, on the ground that this distinction was warranted by the constitution. Hamilton declared "that the constitution was their creed and standard, and ought never to be departed from, but that its provisions had not been correctly understood; that there were two different bodies

in the state to which the proposition had reference. These were the Roman Catholics who were already citizens, who were born among us, and those coming from abroad. That from foreigners wishing to be naturalized, the abjuration of their former sovereign might be required for reasons which do not exist on the part of the person born and educated here, unencumbered with that dangerous fanaticism which terrified the world some centuries back, but which is now dissipated by the light of philosophy. These acts are therefore no longer necessary, for the dangers are now only imaginary, and are void of existence, at least with respect to us, the object being to exclude Roman Catholics from their right of representation.

He animadverted on the little influence possessed by the pope in Europe—spoke of the reformation going forward in the German empire, and of the total independence of the French church, and compared the requiring of oaths of this nature, to the vigilance of those who would bring engines to extinguish fires which had long subsided. He observed, also, that the Roman Catholics were not the only society affected—that some of the Dutch Reformed churches held a species of ecclesiastical foreign jurisdiction; he alluded to the classes of Amsterdam. "But," he asked, "is the natural subject, the man born among us, educated with us, possessing our habits, possessing our manners, with an equal ardent love of his native country, to be required to take the same oath of abjuration? What has he to abjure? He owes no fealty to any other power upon earth. There is no probability that his mind will be led astray by bigotry or foreign influence. Then why give him cause of dissatisfaction, by bringing forward a *test* which will not add to his fidelity?"

He stated that the clause in the constitution confined the test to foreigners, and that it was adopted after much debate, and by a small majority, and that even as to them, he

questioned whether the test ought to be proposed. That he was decidedly against going so far as to extend it to ecclesiastical matters. "Why should we wound the tender conscience of any man? and why present oaths to those who are known to be good citizens? why alarm them? why set them upon inquiry that is useless and unnecessary? You give them reason to suppose that you request too much of them, and they cannot but refuse compliance.

"The constitution does not require such a criterion to try the fidelity of any citizen. It is solely intended for aliens and foreigners, coming from abroad with manners and habits different from our own, and whose intentions are concealed. The oath should be confined to civil matters. It is all that we ought or can require. A man will not then be alarmed in his interpretation. It will not set his mind to inquire if his religious tenets are affected, and much inconvenience would be avoided. We should be cautious how we carry the principle of requiring and multiplying tests upon our fellow-citizens, so far as to practise it to the exclusion or disfranchisement of any." The clause was, nevertheless, in part retained.

A further provision was proposed, excluding pensioners and officers holding under congress, from seats in the senate and assembly. This clause gave rise to the discussion of a most important question, whether the legislature possessed the power of abridging the constitutional rights of the people.

By the state party it was contended, that while the constitution protected the rights of the electors, it was silent as to the *elected*, and that therefore the legislature had the right to annex qualifications to the elected.

Colonel Hamilton observed, "that they were going on dangerous ground; that the best rule to follow was the rule of the constitution, which it would be safest to adhere to without alteration or addition. If we once depart from

this rule, it is impossible to see where we would end. To-day, a majority of the persons sitting here, from a particular mode of thinking, disqualify one description of men; a future legislature, from a particular mode of thinking on another point, disqualify another set of men. One precedent is the pretext of another, till we narrow the ground of qualifications to a degree subversive of the constitution. It is impossible to suppose that the convention who framed the constitution were inattentive to this point. It is a matter of too much importance not to have been well considered.

"They have fixed the qualification of electors with precision. They have defined those of senator and governor, but they have been silent as to the qualifications of members of assembly. It may be said that, being silent, they have left the matter to the discretion of the legislature. But is not the language of the framers of the constitution rather this—We will fix the qualifications of electors; we will take care that persons absolutely indigent shall be excluded; we will provide that the right of voting shall be on a broad and secure basis, and we will trust to the discretion of the electors themselves the choice of those who are to represent them in assembly?

"Every qualification implies a disqualification. The persons who do not possess the qualification required, become ineligible. Is not this to restrain the freedom of choice allowed by the constitution to the body of electors? An improper exercise of this liberty cannot constitutionally be presumed. Why, therefore, should we circumscribe it within limits unknown to the constitution? Why should we abridge the rights of any citizens in so important an article? By the constitution, every citizen is eligible to a seat in the assembly. If we say certain descriptions of persons shall not be so eligible, what is this but to deprive all those who fall within that description, of an essential right allowed them by the constitution?

"If we once break the ground of departing from the simple plan of the constitution, it may lead us much farther than we intend.

"From the prevalency of a certain system, it is now proposed to exclude all persons from seats who hold offices under congress; the pretence is, to guard against an improper influence. I may think another species of influence more dangerous. To preserve consistency, we should declare that no member of congress should hold a seat. For, surely, if it be dangerous that the servants of congress should have a seat in this house, it is more dangerous that the members themselves should be allowed this privilege.*

"There are officers who have been wounded in the service, and who now have pensions under the United States as the price of their blood; would it be just, would it not be cruel on this account to exclude men from a share in the administration of that government which they have at every hazard contributed to establish? From the silence of the constitution, it is inferred that it was intended to leave this point to the discretion of the legislature. I rather infer that the intention of the constitution was to leave the qualifications of their representatives wholly to the electors themselves. The language of the constitution seems to be this: Let us take care that the persons to elect are properly qualified; that they are in such a situation in point of property as not to be absolutely indigent and dependent, and let us trust to them the care of choosing proper persons to represent them.

"I hold it to be a maxim which ought to be sacred in our form of government, that no man ought to be deprived of any right or privilege which he enjoys under the consti-

* John Lansing and John Haring were recently appointed by the legislature in which they had seats, delegates to congress.

tution, but for some offence proved in due course of law. To declare qualifications or disqualifications by general descriptions in legislative acts, would be to invade this important principle. It would be to deprive, in the gross, all those who had not the requisite qualifications, or who were objects of those disqualifications, of that right to a share in the administration of the republic which the constitution gives them; and thus, without any offence, to incur a forfeiture. As to the objection that the electors might even choose a foreigner to represent them within the latitude of the constitution, the answer is, that common sense would not tolerate such a construction. The constitution, from the fundamental policy of a republican government, must be understood to intend *citizens*.

"Let us pursue the subject a little further. Commerce, it will be admitted, leads to an increase of individual property. Property begets influence. Though a legislature, composed as we are, will always take care of the rights of the middling and lower classes, suppose the majority of the legislature at a future day to consist of wealthy men, what could hinder them, if the right of innovating on the constitution be admitted, from declaring that no man not worth ten thousand pounds should be eligible to a seat in either house? Would not this introduce a principle of aristocracy fatal to the genius of our present constitution?

"In making this observation, I cannot be suspected of wishing to increase the jealousy already sufficiently high of men of property. My situation, prospects, and connections, forbid the supposition; but I mean honestly to lay before you the dangers to which we expose ourselves, by letting in the principle which the clause under consideration rests upon. I give no opinion on the expediency of the exclusion proposed. I only say, in my opinion, the constitution does not permit it; and I shall be against any

qualification or disqualification, either of electors or elected, not prescribed by the constitution.

"The qualifications both of the electors and the elected ought to be fundamental in a republican form of government, not liable to be varied or added to by the legislature, and they should for ever remain where the constitution left them. It is to be lamented that men, to carry some favourite point in which their party or their prejudices are interested, will inconsiderately introduce principles and precedents which lead to successive innovations destructive of the liberty of the subject and the safety of the government." The clause was *stricken out.*

The candour, the simplicity of his truth, and the strict regard to the liberties of the citizen displayed on these occasions, entered deeply into the mind of the house, and every question where state pride was not concerned, or official influence not exerted, he carried by a large majority.

He opposed with great force an amendment of the senate, making a hostile discrimination as to persons who had been engaged in privateering during the war, on the ground that all legislative disfranchisements were unconstitutional. "In one article of the constitution it is said—No man shall be disfranchised or deprived of any right he enjoys under the constitution, but by the law of the land or the judgment of his peers. Some gentlemen hold that 'the law of the land' will include an act of the legislature; but Lord Coke, that great luminary of the law, in his comment on a similar clause in Magna Charta, interprets the law of the land to mean presentment, and indictment, and process of outlawry, as contradistinguished from trial by jury.

"But if there were any doubt upon the constitution, the bill of rights enacted in this very session removes it. It is there declared that no man shall be disfranchised or deprived of any right but by due process of law or the judgment of his peers. The words 'due process,' have a pre-

cise technical import, and are only applicable to the process and proceedings of the courts of justice. They can never be referred to an act of the legislature.

"Are we willing then to endure the inconsistency of passing a bill of rights, and committing a direct violation of it in the same session? In short, are we ready to destroy its foundations at the moment they are laid?

"When the discriminating clauses admitted into the bill by this house were introduced, he was restrained by motives of respect for the sense of a respectable part of the house, from giving it any other opposition than a simple vote. The limited operation they would have, made him less anxious about their adoption, but he could not reconcile it to his judgment or feelings to observe a like silence on the amendment proposed by the senate. Its operation would be very extensive; it would include almost every man in the city concerned in navigation during the war.

"Let us, then, distinct from constitutional considerations, consider the expediency and justice of the clause. The word privateer is indefinite, and may include letters of marque. The merchants of this city during the war, generally speaking, must abandon their means of livelihood or be concerned in navigation. If concerned in navigation, they must of necessity have their vessels armed for defence. They would naturally take out letters of marque. If every owner of a letter of marque is disfranchised, the body of your merchants will probably be in this situation. Is it politic or wise to place them in it? Is it expedient to force by exclusions and discriminations a numerous and powerful class of citizens to be unfriendly to the government?

"He knew many individuals who would be comprehended, who are well affected to the prosperity of the country, who are disposed to give every support to the government, and who, some of them at least, even during the war, had manifested an attachment to the American cause.

But there is one view in which the subject merits consideration, that must lay hold on all our feelings of justice. By the maritime law, a majority of the owners have a right to dispose of the destination of the vessel. The dissent of the minority is of no avail. It may have happened, and probably has happened in many instances, that vessels have been employed as privateers, or letters of marque, by a majority of the owners contrary to the sense of the minority.

"Would it be just to punish the innocent with the guilty, —to take away the rights of the minority, for an offence committed by the majority without their participation, perhaps contrary to their inclinations? He would mention a further case, not equally strong, but of considerable force, to incline the house against the amendment. He had been informed that in one or more instances during the war, some zealous people had set on foot subscriptions for fitting out privateers, perhaps at the instigation of the British government; and had applied to persons suspected of an attachment to us to subscribe, making their compliance a test of their loyalty. Several individuals well disposed to our cause, to avoid becoming the objects of persecution, had complied; would it not be too rigorous to include them in so heavy a penalty?

"It may be said they were guilty of a culpable want of firmness. But if there are any of us who are conscious of greater fortitude, such persons should not on that account be too severe on the weaknesses of others. They should thank nature for its bounty to them, and should be indulgent to human frailty. How few are there who would have had strength of mind enough in such circumstances to hazard, by a refusal, being marked out as the objects of military resentment!

"I hope, as well from motives of justice as a regard to the constitution, we shall stop where we are, and not go

any farther into the dangerous practice of disqualifying citizens by general descriptions."

"Though," a member replied, "he held Colonel Hamilton in high estimation, and had a very great respect for his candour, abilities, and knowledge of mankind, yet he believed him much mistaken. He laid it down as a maxim, that the man who was once an enemy will always remain so. It was prudent to guard against admitting these people to a participation of the rights of citizens. He would not operate on those who had taken up arms unwillingly. The exclusion was constitutional, because the constitution must warrant every thing necessary for its own support." He appealed to that section of it which prohibited attainders, except for crimes committed during the war.

Hamilton denied the distinction, and explained the intention and meaning of this clause of the constitution. He defined acts of attainder, "as laws confiscating for treason and misprision of treason all the property and estate of the attainted traitor, and forfeiting his life unless he appeared to take his trial." This was the construction of it by the country from which we derive our knowledge of jurisprudence, and he believed no example could be adduced, wherein it had been extended or applied in any other manner. He was positive it could not be exercised to disfranchise a whole party; for this obvious reason, that it would involve the innocent with the guilty. This clause in the constitution was only intended to apply in particular cases, where an exception to the established mode of common law became necessary by the persons absenting themselves, and did not apply to the subject before the house. Precedents of this kind laid the foundation for the subversion of the liberties of the people. He hoped they would not be established." He again prevailed.*

* Nays 32 to 21.

It has been stated that in the year seventeen hundred and eighty-two, while Hamilton was continental receiver, he had digested a system of taxation, the great object of which was to exclude arbitrary valuations; that he also had sought to engraft the same principle in the continental revenue system, framed in the following year.

Having been placed on the committee of ways and means, he now brought forward and enforced at much length, similar views. His great objects were to substitute a mode by which every individual could himself estimate what he had to pay, without being dependent on the caprices, the affections, or the enmities of another; and to approximate as near as possible to certainty and equality, the two great objects to be aimed at in every system of taxation.

One of the clauses of the bill raising taxes deviated from a general and safe principle. It proposed a tax on certain legal instruments, and was objected to because it was partial in its operation affecting the members of the law. Hamilton declared his opinion, "that it was not proper to tax any particular class of men for the benefit of the state at large; but in the present instance it was to answer a very important purpose. It was putting in force that most excellent part of the constitution, which declares that the judges should be independent of the legislature. This, at present, was not the case. He therefore supported the paragraph, observing that the salaries of the judges should be permanent; that they should neither fear the powers nor court the favour of the legislature. He believed it was right that this independence should arise from the tax proposed." He succeeded in sustaining this provision, but the plan, after a very full consideration, was defeated by a small majority.

A discussion arose upon the objections of the council of revision to a bill for settling intestate estates, proving wills,

and granting letters of administration. Jones advocated the enactment of the law. Hamilton, after stating that he should probably vote with him, remarked, "that he did not view the matter in quite so clear a light as that gentleman appeared to do. There appeared to him to be difficulties in the case, which he would candidly lay before the house to assist its judgment.

"The objection is, that a new court is erected, or an old one invested with a new jurisdiction, in which it is not bound to proceed according to the course of the common law. The question is, what is meant in the constitution by this phrase, 'the common law?' These words have, in a legal view, two significations—one more *extensive*, the other more *strict*. In their most extensive sense, they comprehend the constitution of all those courts which were established by immemorial custom; such as the court of chancery, the ecclesiastical court, &c.; though these courts proceed according to a peculiar law.

"In their more strict sense, they are confined to the course of proceedings in the courts of Westminster, in England, or in the supreme court in this state. If the words are understood in the first sense, the bill under consideration is not unconstitutional. In the last it is unconstitutional, for it gives to an old court a new jurisdiction, in which it is to proceed according to the course of the common law in this last sense. And to give new jurisdiction to old courts, not according to the course of the common law, is, in my opinion, as much of an infringement, in substance, of this part of the constitution, as to erect new courts with such jurisdiction. To say the reverse, would be to evade the constitution.

"But, though I view it as a delicate and difficult question, yet I am inclined to think that the more *extensive* sense may be fully adopted, with this limitation—that such new jurisdictions must proceed according to the course of those

courts, having, by the common law, cognizance of the *subject matter*. They ought, however, never to be extended to *objects* which, at common law, belonged to the jurisdiction of the courts at Westminster, and which in this state are of the peculiar cognizance of the supreme court. At common law, the ecclesiastical courts, not the courts of Westminster, had cognizance of intestacies and testamentary cases. The bill proposes that the court of probates shall have cognizance of the same causes and proceed in the same manner as the ecclesiastical courts, except as to inflicting ecclesiastical penalties. The distinction I have taken will, I am inclined to think, bear us out in passing the bill under consideration. But it is certainly a point not without considerable difficulty." The bill was passed

If the precise and profound knowledge of the great principles of jurisprudence here evinced, commands the respect of that important class of men whose profession educates and constitutes them the guardians of human rights, his tolerant spirit more attracts the commendation of all those who justly value freedom of conscience, without which the law is chiefly known by her fetters and her scourge.

In the question, the solemn question, "Why should we wound the tender conscience of any man?" the sternest rebuke is given to him who would control religious opinion by the secular arm, as if man had any power over the soul of man. Nor is it less pleasing to remark the caution and the heart with which he watched over the rights of the numerous and less favoured body of men. In the statute regulating elections, it is the poor and "the illiterate" elector who is to be protected, as well as "his more instructed fellow-citizen," in the right of suffrage, and in the right of choosing as his representative whom he pleased; that right to be enjoyed as the constitution gave it, not to be infringed by any legislative act, but to be judged by the law of the land "in its due process."

As a matter affecting the poor, he prepared a bill to regulate the circulation of copper coin, founded on a report which showed a depreciated copper currency, and framed a resolution directing the delegates in congress to move for an alteration in the ordinance as to the mint, so that the copper coin should not pass for more than the actual value of the copper and the expense of coinage.

While discussing an act to exempt from imprisonment the smaller classes of debtors, his only apprehension was, that this exemption would prevent the poor from obtaining assistance from the rich. "He would wish," he said, "that every man in distress would meet relief—he would enter into any measure that would effect this purpose. But the clause as it stood, was not proper; it might be right to say what shall be done in respect to future contracts, but it would be wrong to meddle with the past."

The law to diminish the expense of the collection of small debts, and those in relation to the descent and distribution of property, are all in a similar equal spirit.

At the previous session, an act had been passed abolishing entails, and dividing the inheritance in equal parts among the lawful issue of the intestate. This principle was now extended to personal property, with an equitable reference to previous settlements or advances. Freeholders were, by another act, empowered to alien at their pleasure, and the feudal badges abolished; all charges incident to wardships, liveries, values, and forfeitures of marriages being taken away, and the tenures so held, turned into free and common socage. Lands exempt in other states were here made liable to be sold by executions for debt, and the process in personal actions was simplified.

Having thus given the law a free course, he drafted an act of bankruptcy.

Criminal jurisprudence was also an object of his attention. While he sought to secure the rights of society, a

spirit of lenity marked his course. He introduced an act for the speedy trial of small offenders, and while condemning the severity of some of the penal laws of England, he sustained those which had in view the protection of the subject from arbitrary power. The law of treason was defined, by declaring it to consist only in levying war against the people of the state, or in adhering to their enemies, giving them aid and comfort. It must be established "by good proof of open deed," and no person could be indicted for or convicted of it except on the oaths of "two lawful witnesses," or upon confession "without violence, in open court."

The various other crimes in their successive gradations were also defined, and their punishment prescribed. Amid the disorders following a revolution, frequent violations of personal liberty would take place. To remedy this great evil, a bill was passed to prevent delays in obtaining the benefit of the writ of habeas corpus, entitled "An act for the better securing the liberty of the citizens of the state."

Litigation had become rife, and there was a violent clamour against the members of the bar, by the many against whom the arm of justice was raised. A bill was brought forward to reduce their compensation: with the respect due to the profession of which he was a member, and with a discriminating regard to the true interests of the public, he resisted it as a mere lure for popularity, and demonstrated the folly of reducing their compensation below a reasonable standard. With the same regard to justice, he earnestly opposed a proposition which had been made in a former legislature, and was now renewed, for a discrimination between the different classes of the public creditors, and urged a general and equal provision for them all. "The state," he declared, "ought to give all the relief possible to every class of public claimants. There should be no discrimination with respect to possessors of certificates,

There was no propriety in a partial relief; justice should alike be administered to all." Thus, in a session of the legislature the most distinguished in the annals of this state, he is seen usefully employed in guarding against excess of every kind, and in a revisal and cautious modification of most of the great statutes fundamental to its polity.

Had a desire for personal distinction influenced him, instead of this careful observance of ancient landmarks and established precedents, the social system might have been disturbed to gratify the ambition of being the author of a code; but his was of another kind.*

At this time was also passed an act for the encouragement of navigation by steam, and thus an incitement was given to discoveries which form an era in the annals of this country. This was also an epoch in another branch of legislation, which must largely and happily control its future destinies.

The proposed provisions in the law governing elections for the protection of the rights of illiterate persons, show the want of education at this time. The evil was one of an extent and magnitude worthy the cares of a statesman employed in laying the foundations of an empire.

When studying closely, as Hamilton had done, the intellect of the ancient world, while the wonderful advances it had made with its feeble aids attracted his admiration, the pervading defect of its polity could not have escaped his observation. Its institutions were for the few; the progressive nature of society was overlooked, and hence their frequent and sudden, violent and total subversion. A system of general education was unknown, and consequently when the civilized world was overrun, forming no part

* It would be a great injustice to omit the name of Samuel Jones as a chief coadjutor in this important duty. To his profound learning, this state is much indebted as a *reviser* of its laws.

of the state, learning was buried amid the ruins of empires, or was compelled to take refuge in the cloister. Emerging from this asylum by slow degrees, it came into a rude world, obscured by the dogmas of the contending sects, which, admitting the theory, refused the right of free inquiry, and at the same time assumed the high office of teaching nations.

The United States being settled at this time, felt these influences, and the early colonies, in their religious prejudices and political speculations, exhibit conspicuously the coexistence of the most adverse principles; in questions of faith, a narrow tyranny; in questions of government, the largest liberty. With the distinguished exception of parts of New-England, the only education proceeded from religious endowments; a happy provision for a people too poor and sparse to educate themselves. But these endowments were inadequate to the purpose.

Hamilton resolved to supply this deficiency. Guarding against sectarian or other influences foreign to it, he determined to build up a great system of public instruction upon comprehensive principles; to make it so essential a part of the public policy, that it would endure through every change of government; to render it by habit a want of society, a necessary part of its aliment that must and will be satisfied.

His first great object was to place a book in the hand of every American child. As, in his enlarged views, each branch of knowledge had its place and value in reference to the various natural indications of the mind, the next was to provide for each individual, and each degree and variety of talent, a progressive culture. Thus, from the broad basis of common education was to rise in due gradation a system of order and of beauty, to be cemented with, to pervade, to sustain, to overarch, and to embellish the whole moral and political frame of society.

Only one literary foundation of magnitude existed in the colony of New-York, known as King's College; an endowment by the church of England in the year seventeen hundred and fifty-four, on condition of conformity with its tenets. This college was dispersed at the beginning of the revolution. Its professors fled, its library was plundered, and the edifice, which had been occupied by the British soldiery, alone remained. In the interior of the state the few schools which had been sustained by private resources were abandoned; a fact of moment to show the character of the generation which grew up during this civil war. Soon after the peace, the attention of the legislature was directed to this subject, and in May, seventeen hundred and eighty-four, an act was passed to create a university, of which the great officers of the state, with twenty-four others to be appointed by the governor and council of appointment, and one to represent the clergy, were constituted the regents, upon whom was conferred the government and visitation of the colleges and schools that should be established. This act also provided, in addition to the regents appointed by the state, that every religious society might institute a professorship, and that every founder of a college or school might elect a representative, who, with the president of each institution, was to be a member of the board of regents, of which all professors, tutors, and fellows, were also to be members in virtue of their offices.

Thus, the control of education would soon have been wrested from the state, and would have passed into the hands of those either least apt to detect, or most interested in concealing abuses, and who would not have kept pace with the advances of society. This act also violated a great principle of justice, despoiling King's College of its property and vesting it in the university. At the next meeting of the legislature an amendatory act was passed,

which extended the error of the original law by giving to the clergy of each denomination the right of representation in the regency. It also constituted a new board of regents, of which Hamilton was appointed a member. No beneficial results were attained by this legislation; the college languished, and the severe blow which it had received by the violation of its charter left little prospect of its renovation, while the precedent would deter other similar efforts of munificence. It also essentially deviated from Hamilton's views, which contemplated a state establishment for public instruction, excluding all clerical and individual influence.

Soon after the excitement which had arisen at the opening of the session was quieted, he introduced "an act to institute a university, and for other purposes." This act repealed the previous laws, and established a university by the style of the "Regents of the University of the State of New-York;" who were incorporated with perpetual succession, with power to hold property yielding a limited income. It provided, that there should be always twenty-one regents, "of which the governor and lieutenant-governor of the state, for the time being, were always, in virtue of their offices, to be two;" and it appointed the other regents by name, who, with all future regents, were to continue in place during the pleasure of the legislature, which was to supply vacancies. Thus, it was hoped that the supervision of education would not be perverted to party purposes.

The regents were to be convened by the governor, in the first instance, and were to elect a chancellor and vice-chancellor, to hold their offices during their pleasure.

The regents were constituted the visiters of all the colleges and academies of the state, with the duty of visiting every college once in each year. They were enjoined to meet annually at the seat of government, to report the state

of education and discipline to the legislature, with power to supply vacancies occurring in the offices of presidents of the colleges, or of the principals of the academies, through the neglect of their trustees. They were also to confer degrees, to apply their funds at their discretion, "in a manner most conducive to the promotion of useful knowledge within the state," and to authorize the founding of colleges and academies by individuals, the trustees of which, whose number was defined, after a declaration under the common seal of the regents to that effect, became incorporated with perpetual succession, but always subject to their visitation.

The annual revenue of the academies was also limited. The scholars educated in those, whose plan of education should be approved by the regents, were entitled, upon examination, to be admitted into either college.

Provisions were made for the government of these academies by their trustees, and for their elevation to the rank of a college when deemed expedient by the regents. No president or professor was to be ineligible by reason of his religious tenets—all test-oaths were prohibited. No professor or tutor could be a trustee of any of these establishments; nor could any presiding officer have a vote as to his salary, nor were any of the officers or founders of these institutions eligible as regents of the university. These were the general provisions of this important act. It also repaired the wrong to King's College, ratifying its charter under the previously selected name of Columbia College, expressly abrogating all provisions in it requiring test-oaths or declarations of religious conformity, limiting the number of the trustees, when reduced by death or resignation, to twenty-four persons, who were vested with the original property of the college. By this system, all the seminaries of instruction became a part of the university, and were subject to its visitation. Every institution

had a government of its own, and a strong inducement to improvement was held out to each academy, by the promise of advancement to the rank of a college.

The privilege to the scholars of academies of admission into the colleges, would secure a uniformity of discipline and of education, and, that which Hamilton deemed of the greatest importance under a popular government, every foundation of learning was secured from legislative interference by a perpetual charter.

Justly as New-York may boast her provision for the education of her citizens, yet from a want of perseverance and comprehensive energy in its administration, this important act has not yet produced all the beneficial results anticipated by its author.

It is only by a comparison of his system with those of the autocratic monarchies of Europe, and of their success in extending and raising the popular intelligence, that a just estimate can be formed of its merits.

Thus viewed, it will be deemed not a little remarkable that Hamilton should have anticipated, by a bold effort of his genius, a plan of public instruction that will bear comparison with those which in Europe have been the results of long usage, and of successive acts of legislation, at last moulded into a form that would seem not to be susceptible of improvement.*

While his mind had been in part occupied with these various subjects of interest, his thoughts were chiefly directed to the great object which had induced him to accept a seat in the assembly. Would New-York still obstinately withhold from congress the power of raising a national revenue, was the question he resolved to determine.

* It is stated that the imperial decree of March, 1808, must, from its analogy with this law, have been "seen and copied" by the statesmen of France. —Am. Qr. Rev. v. 6, p. 145.

Every effort having been made to impress on the members of the legislature the necessity of granting the impost upon terms which would be accepted by the other states, a final action on this measure took place on the fifteenth of February.

After adverting to the discrepancy of the votes which had been given on the different clauses of this bill, Hamilton observed:—

"It is a common practice upon the discussion of an important subject, to endeavour to conciliate the good-will of the audience to the speaker, by professions of disinterestedness and zeal for the public good. The example, however frequent, I shall no farther imitate than by making one or two general observations. If, in the public stations I have filled, I have acquitted myself with zeal, fidelity, and disinterestedness; if, in the private walks of life, my conduct has been unstained by any dishonourable act; if it has been uniformly consistent with the rules of integrity, I have a right to the confidence of those to whom I address myself. They cannot refuse it to me without injustice—I am persuaded they will not refuse it to me.

"If, on the other hand, my public conduct has been in any instance marked with perfidy, duplicity, or with sinister views of any kind; if any imputations founded in fact can be adduced to the prejudice of my private character, I have no claim to the confidence of the community, nor should I expect it.

"Even these observations I should have spared myself, did I not know that, in the rage of party, gross calumnies have been propagated. Some I have traced and detected; there may still be others in secret circulation, with which I am unacquainted. Against the influence of such arts I can have no other shield than the general tenor of my past conduct. If that will protect me, I may safely confide in the candour of the committee. To that standard I cheer-

fully submit. But, indeed, of what importance is it who is the speaker? His reasons only concern the committee. If these are good, they owe it to themselves and to their constituents to allow them their full weight."

He then proceeded to examine the objections which had been raised to the delegation of legislative power to congress. This examination led to a close and cogent argument, embracing a consideration of the relations of the states to the confederacy; showing that the idea of a Union of the colonies had pervaded all the public acts of the country; that it was continued and confirmed in the declaration of independence; and that the confederation, by the express terms of the compact, preserved and continued the power of perpetuating that union. In the course of these remarks, the powers of the confederation were briefly analyzed, and its supremacy asserted; and it was shown that the objections to the proposed grant of the impost would, if sustained, have proved that the powers already vested in it were illegal and unconstitutional; would render a confederation of the states in any form impracticable, and would defeat all the provisions of the constitution of the state which related to the United States. "If," he observed, "the arguments I have used under this head are not well founded, let gentlemen come forward and show their fallacy. Let the subject have a fair and full explanation, and let truth, on whatever side it may be, prevail."

He in the next place answered the objection, that this grant of the impost to congress would endanger their liberties; and, in order to overcome prejudice, he gave a narrative of the origin and progress of the measure. "Whence," he asked at its close, "can this danger to liberty arise? The members of congress are annually chosen by the several legislatures; they are removable at any moment at the pleasure of those legislatures. They come together with different habits, prejudices, and interests. They are, in fact,

continually changing. How is it possible for a body so composed to be formidable to the liberties of the states, several of which are large empires in themselves?

"The subversion of the liberty of these states could not be the business of a day. It would at least require time, premeditation, and concert. Can it be supposed that the members of a body so constituted, would be unanimous in a scheme of usurpation? If they were not, would it not be discovered and disclosed? If we even could suppose this unanimity among one set of men, can we believe that all the new members, who are yearly sent from one state or another, would instantly enter into the same views? Would there not be found one honest man, to warn his country of the danger?

"Suppose the worst: suppose the combination entered into and continued;—the execution would at least announce the design, and the means of defence would be easy. Consider the separate power of several of these states, and the situation of them all! Consider the extent, populousness, and resources of Massachusetts, Virginia, Pennsylvania, I might add, of New-York, Connecticut, and other states! Where could congress find means sufficient to subvert the government and liberties of either of these states? Or rather, where find means sufficient to effect the conquest of all? If an attempt was made upon one, the others, from a sense of common danger, would make common cause, and they could immediately unite and provide for their joint defence.

"There is one consideration of immense force in this question, not sufficiently attended to. It is this—that each state possesses in itself the full power of government, and can at once, in a regular and constitutional way, take measures for the preservation of its rights. In a single kingdom or state, if the rulers attempt to establish a tyranny, the people can only defend themselves by a tumultuary insurrection. They must run to arms without concert

or plan, while the usurpers, clothed with the forms of legal authority, can employ the force of the state to suppress them in embryo, and before they can have time or opportunity to give system to their opposition. With us the case is widely different. Each state has a government completely organized in itself, and can at once enter into a regular plan of defence, with the force of the community at its command. It can immediately form connections with its neighbours, or even with foreign powers, if necessary.

"In a contest of this kind, the body of the people will always be on the side of the state governments. This will not only result from their love of liberty and regard to their own safety, but from other strong principles of human nature." Among these were mentioned the operation of the state governments upon the immediate personal concerns to which the sensibility of individuals is awake—the distribution of private justice, and the weight of official influence. 'The causes,' he said, 'which secure the attachment of the people to their local governments present us with another important truth—the natural imbecility of federal governments, and the danger that they will never be able to exercise power enough to manage the federal affairs of the union. Though the states will have a common interest, yet they will also have a particular interest; for example, as a part of the union, it will be the interest of every state that the general government should be supplied with the revenues necessary for the national purposes; but it will be the particular interest of each state to pay as little itself, and to let its neighbours pay as much as possible. Particular interests have always more influence upon men, than general. The several states, therefore, consulting their immediate advantage, may be considered as so many eccentric powers tending in a contrary direction to the government of the union, and as

they will generally carry the people along with them, our confederacy will be in continual danger of dissolution.

"This is the real rock upon which the happiness of this country is likely to split. This is the point to which our fears and cares should be directed. To guard against this, and not to terrify ourselves with imaginary dangers from the spectre of power in congress, will be our true wisdom."

He then proceeded to examine and to vindicate the provisions of the bill making the proposed grant—pointed out the habitual delinquencies to the repeated requisitions—the small amount of the general revenue collected—the hostility of the adjacent states—the increased burden imposed on New-York by the inequality of the existing system—the beneficial consequences of a national revenue—the necessity of it for the payment of the foreign debt. Having dwelt upon these topics, which compelled a large survey of the state of the country, he closed with the following remarks: "Can our national character be preserved without paying our debts? Can the union subsist without revenue? Have you realized the consequences which would attend its dissolution? If these states are not united under a federal government, they will infallibly have wars with each other, and their divisions will subject them to all the mischiefs of foreign influence and intrigue. The human passions will never want objects of hostility. The western territory is an obvious and fruitful source of contest. Let us also cast our eye upon the map of this state, intersected from one extremity to the other by a large navigable river. In the event of a rupture with them, what is to hinder our metropolis from becoming a prey to our neighbours? Is it even supposable that they would suffer it to remain the nursery of wealth to a distinct community? These subjects are delicate, but it is necessary to contemplate them, to teach us to form a true estimate of our situation. Wars with each other beget standing

armies—a source of more real danger to our liberties than all the power that could be conferred upon the representatives of the union; and wars with each other would lead to opposite alliances with foreign powers, and plunge us into all the labyrinths of European politics.

"The Romans, in their progress to universal dominion, when they conceived the project of subduing the refractory spirit of the Grecian republics which composed the famous Achæan league, began by sowing dissensions among them, and instilling jealousies of each other and of the common head; and finished by making them a province of the Roman empire. The application is easy. If there are any foreign enemies, if there are any domestic foes to this country, all their arts, all their artifices will be employed to effect a dissolution of the union. This cannot be better done than by sowing jealousies of the federal head, and cultivating in each state an undue attachment to its own power."

The statements given by persons yet living, and in the gazettes of that day, show the impression produced upon the public opinion on this occasion. The speech was received and perused with very great interest. "I well remember," Chancellor Kent observes, "how much it was admired for the comprehensive views which it took of the state of the nation—the warm appeals which it made to the public patriotism—the imminent perils which it pointed out, and the absolute necessity which it showed of some such financial measure to rescue the nation from utter ruin and disgrace."

The importance of the question, and the expectation of an animated discussion, had called together most of the distinguished men of the state, who awaited with anxiety the decision of the house. On taking the final vote, there appeared in favour of the impost, twenty-one, against it thirty-six members.

To this address there was no reply. The opposition neither attempted to justify their votes on this momentous question by argument, nor to invalidate the cogent eloquence of Hamilton. It was defeated by a silent vote, which led to the remark, "that the impost was strangled by a *band* of *mutes*."*

One other subject remained of great importance and perplexity in any issue of events, whether New-York, were to become an independent commonwealth, which she could not have long remained, or whether the union should be preserved. It was the long-agitated question of the New-Hampshire grants, or state of Vermont as it was then called, although not recognised by the confederation.

The letter of Hamilton to Governor Clinton, on his retirement from congress in seventeen hundred and eighty-three, stated the little probability of an adjustment of that question by any other means than by a federal court. The inhabitants of the district of country in dispute, had since that period been increasing in numbers, and it had at last become obvious, that the only possible mode by which New-York could maintain her jurisdiction, must be by a resort to force.

The continuance of the controversy had embittered the

* Chancellor Livingston wrote to Hamilton on the 5th of March, 1787: "I received your information relative to the law for dividing the district. I am much obliged by your attention to that subject. While I condole with you on the loss of the impost, I congratulate you on the laurels you acquired in fighting its battles. I shall endeavour to make myself here useful by effecting some changes in the representation. I expect this will produce some attack on me, or my salary. All I expect from my friends, will be, that they do not suffer such exertions to be made as will be dishonourable to me.* A liberal and honourable appointment, such as would enable me to live as I would wish constantly in New-York, I cannot expect from the prevailing party."

* The attack was made, but was defeated by "his friends." Hamilton moved the highest sum. He soon after this framed a law, which passed, for the adjustment of the title of the Oneida purchase, affecting a very large portion of the state.

angry feelings of the disputants. The ruling party in New-York had committed themselves with her citizens on this subject; and while their domestic interests, the exposure of her frontier, the avoidance of a civil war, all combined to render an acknowledgment of the independence of Vermont unavoidable, not an individual, since Schuyler had failed in his efforts in seventeen hundred and eighty, had acquired sufficient influence in the legislature to carry with him the public mind. The situation of Clinton in reference to this subject was not free from embarrassment.

The question of territorial jurisdiction commenced in the year seventeen hundred and forty-nine, when Governor Wentworth made the grant of Bennington. It continued to be a source of difficulty between the governors of New-Hampshire and New-York, and was rendered more intricate by the conflicting orders of the privy council of Great Britain, until near the period of the revolution, when the people of Vermont determined upon open resistance.

In seventeen hundred and seventy-two, conventions of the different towns were held, and were renewed at intervals, which passed resolves, forbidding the inhabitants of the "grants" from accepting titles, holding offices from, or acting under the authority of New-York, and enforced their resolves with extreme severity.

In seventeen hundred and seventy-four, under the royal government, Clinton was appointed chairman of a committee of the New-York assembly, which reported various resolutions, reciting the violence of the grantees, denouncing their leaders, and recommending a proclamation for their apprehension, which was issued by Governor Tryon. A counter proclamation from Ethan Allen, and others of the proscribed, announced their determination to "resist unto blood." This state of things continued until the assembling of the continental congress, when, encouraged by the exploit of Allen at Ticonderoga, the "revolters" pe-

titioned that body, that they might be permitted to do military duty as inhabitants of "the grants," and not of New-York, and asked commissions to that effect. Congress recommended to them in reply, to submit to New-York, and to contribute their assistance, but without prejudice to their rights.

Thus situated, on the twenty-fourth of July, seventeen hundred and seventy-six, independence having been declared, a convention assembled, which, after two adjournments, met on the fifteenth day of January, seventeen hundred and seventy-seven, and proclaimed themselves a state.

In this altered position, Clinton, recently elected governor of New-York, by withdrawing the penalties of the proclamation, and by overtures to confirm the titles to the lands actually occupied, sought to sooth their discontents; but Allen, suspecting the policy of New-York, with inflexible determination, immediately prepared a force to suppress an organization which was forming to oppose the recently claimed supremacy of his state. Clinton, thus driven from his purpose of conciliation, openly took the ground that the authority of Vermont should in no instance be acknowledged, except in the alternative of submission or inevitable ruin. An appeal was then made to congress, and in the mean time, an union of the eastern and western districts of Vermont was consummated.

All hope of peaceable adjustment was by this act at an end, and the alternative of force was brought distinctly before the councils of New-York. The umpirage of congress, probably not sought sincerely by either party, and which, if the decision had been against Vermont, would have proved a nullity, was avoided, until New-York at last became convinced that her claims must be abandoned.

The governor, from the course to which he had been so conspicuously committed, from the circumstance that the

policy advised by Schuyler had been impeached on the ground that he was regardless of the rights of the state, and perhaps from an unwillingness to impair his own influence, partly derived from his scrupulous assertion of those rights, was little inclined to assume the open responsibility of surrendering so large a portion of her territory.

Under these circumstances, Hamilton, whose popularity had risen so high that he was contemplated as a candidate for the office of governor, felt it his duty to come forward, and on the fifteenth of March, introduced a bill "to authorize the delegates of New-York in congress, to accede to and confirm the independence and sovereignty of the people inhabiting the district of country commonly called Vermont."

On presenting the bill, he made a few observations, of which a brief sketch was published at the time, from recollection, giving an interesting view of the urgent motives which prompted the measure.*

The great extent of disputed territory which was owned by the inhabitants of the state of New-York, had created a very powerful opposition to it. A meeting of those having the largest interest in the question was held, and after frequent consultations, it was determined to make a strong appeal to the legislature. After much deliberation, the opponents of the bill resolved to apply to the assembly to be heard by counsel at the bar of the house, a mode of proceeding which, though of frequent occurrence before the British parliament, is believed to have been entirely novel in New-York.

The gentleman solicited to perform this duty was Richard Harrison, a lawyer and a scholar, distinguished for his ability, and learning, and probity. The bill was objected

* Vermont had raised troops, and declared, that if no decision were pronounced by congress within two months after nine states had met, that she would resort to force.

to by him, as unconstitutional, impolitic, and destructive to the property of the citizens.

As the constitution had expressly declared the counties of Cumberland, Gloucester, and Charlotte, which embraced the territory proposed to be ceded, parts of the state, it was urged that the legislature could not sever them from it—that such a power had not been delegated to them—that, if delegated, it must have been to congress as the arbiters of peace and war—that such a dismemberment was only authorized by a case of extreme necessity, which was alleged not to exist. The presumption of danger from subsisting connections between Vermont and Canada, was denied. If it existed, where was the proof? The danger of the example of permitting a revolt of these counties was enlarged upon, and arguments were adduced to show that no public advantage, either in respect to revenue or other effects, would be derived from the admission of Vermont into the confederacy. The address was concluded with an earnest exposition of the rights of the proprietors of these lands to be indemnified by the state, and a suggestion of the appointment of commissioners to treat with the revolters.

Hamilton's reply is among the most able fragments of his eloquence which have been preserved. It fully met the objection to the act, which was drawn from that great principle of the social compact, that the chief object of government is to protect the rights of individuals by the united strength of the community; insisting that the efforts of a state were to be "proportioned to its abilities, warranted by a reasonable expectation of a favourable issue, and compatible with its eventual security; but that it was not bound to enter into or prosecute enterprises of a manifest rashness and folly, or which in the event of success would be productive of more mischief than good." He then reviewed the pretensions of Ver-

mont, and contrasted her power to resist with that of New-York to enforce these territorial claims.

From this topic he passed on to an examination of the constitutionality of the bill, asserting that the power of dismembering the state, under certain circumstances, was a necessary appendage of its sovereignty. Instances of such dismemberments were referred to, and the writers on international law were quoted to establish the right "to lop off a limb for the good of the body." From an exposition of the right, he proceeded to a review of the policy of this measure; in the course of which, he adduced facts to show that Vermont had borne such relations to Great Britain during the revolution as to justify the belief, that, should a collision arise, she would receive aid from their recent enemy.

The remaining questions were, how far New-York had a right to acknowledge the independence of Vermont, and how far she was bound to make compensation to the owners of the disputed territory. He urged the actual independence of Vermont as an answer to the first inquiry; stated, that as to territorial claims, the confederacy provided a tribunal for their adjustment; and insisted that the state was not under a strict obligation to make compensation to the losing proprietors. "The distinction," he said, "is this—if a government voluntarily bargains away the rights, or dispossesses itself of the property of its citizens in their enjoyments, possessions, or power, it is bound to make compensation for that of which it has deprived them; but if they are actually dispossessed of those rights or that property by the casualties of war, or by revolution, the state, if the public good requires it, may abandon them to the loss without being obliged to make reparation."

"In wars between states, the sovereign is never supposed to be bound to make good the losses which the subject sustains by the captures or ravages of the enemy, though

they should amount to the destruction of his whole property; and yet nothing can be more agreeable to natural equity than that those who happen to be the unlucky victims of the war should be indemnified by the community."—"But in practice such a principle would be found attended with endless difficulties and inconveniences; and therefore the reverse of it has been adopted as a general rule: The true reason is, the resources of nations are not adequate to the reparation of such extensive losses as those which are commonly occasioned by wars and revolutions, and it would, therefore, be contrary to the general good of society to establish it as a rule that there is a strict obligation to repay such losses. It is better there should be individual sufferings, than to admit a rule which would fetter the operations of government, and distress the affairs of the community. Generosity and policy may, in particular instances, dictate such compensations. Sometimes they have been made by nations, but much oftener omitted. The propriety of doing the one or the other must depend on circumstances in which the ability of the public will always be a primary consideration."

As to the examples derived from Roman magnanimity, he remarked:—"Neither the manner nor the genius of Rome are suited to the republic or age we live in. All her maxims and habits were military—her government was constituted for war. Ours is unfit for it; and our situation, still less than our constitution, invites us to emulate the conduct of Rome, or to attempt a display of unprofitable heroism."—"One more observation will," he said, "conclude what I have to say. The present situation of our national affairs appears to me peculiarly critical. I know not what may be the result of the disordered state of government. I am, therefore, the more solicitous to guard against danger from abroad. Gentlemen who view our public affairs in the same light in which they present them-

selves to my mind, will, I trust, vote with me upon the present occasion. Those, on the contrary, who think all is well, who suppose our government is full of energy, our credit high, our trade and finances flourishing, will probably see no room for any anxiety about the matter, and may be disposed to leave Vermont in its present state. If the bill should fail, I hope they never will have occasion to regret the opportunity they have lost."

At the end of this speech, the question was taken, and the bill recognising the independence of Vermont, on the condition of her entering into the confederacy, passed. By this well-timed measure a civil war was prevented, and another state soon after became a member of the union.

CHAPTER XLV.

The vote of the New-York legislature on the impost decided the fate of the confederation. The only hope of preserving an union of the states rested upon the issue of the contemplated convention.

The assembly of Virginia being the first state legislature in session after the adjournment of the commissioners at Annapolis, passed an act in October for the appointment of seven commissioners to meet at Philadelphia, and to join with the deputies of the other states, "in devising and discussing such alterations as may be necessary to render the federal constitution adequate to the exigencies of the times." New-Jersey was the second to act on this subject, appointing commissioners on the twenty-third of November, with powers similar to those previously granted by her. Pennsylvania chose delegates with like powers on the thirtieth of the succeeding month.

The report from Annapolis was submitted to congress soon after its date; but a determined opposition being made to the proposed convention, on the ground of its illegality, it was not acted upon: thus, tenacity of power grows with conscious weakness. When the legislature of Massachusetts assembled, Governor Bowdoin, still zealous for this great measure, sent them a message, in which, after a mention of the reasons that had induced the meeting at Annapolis to adjourn, he again declared his conviction of the importance of amending the confederation. Its

delegates to congress then appeared, and explained the motives by which they had been actuated.

King observed—"that the report of the commercial convention was before congress. Doubts had arisen as to the mode of agreeing upon commercial regulations. The confederation was the act of the people. No part could be altered but by consent of congress and confirmation of the several legislatures. Congress, therefore, ought to make the examination first; because, if it was done by a convention, no legislature could have a right to confirm it. Did any legislature sit for such a purpose? No. It must be referred to the people, and then what degree of assent was necessary to make it an article of the confederation? Whereas if it was conducted agreeably to the confederation, no such difficulty could exist. Besides, if congress should not agree upon a report of a convention, the most fatal consequences might follow. Congress were, therefore, the proper body to make alterations."

After adverting to the efforts of the several states, he remarked, that not more than half a million of dollars had been received from them in the last two years; that "it had become a subject of admiration how government existed; that so melancholy was the state of the federal treasury, that all men seemed to turn away from it as an evil which admitted of no remedy. If all the states could be brought into the continental impost, this resource might be anticipated, and the national credit strengthened in that way; but there remained two states which had not acceded to it—Pennsylvania and New-York. The situation of the former was known, and should that state comply, as there were some grounds to hope and expect, the danger of the union, and the love which New-York must entertain for the confederation, must induce their accession to the system." He closed his observations with a strong comment on the existing commotions in Massachusetts,

suggesting the probability that congress would make exertions to suppress them. Dana, another delegate, concurred in these views. Their speeches were published, and as no measures were taken for the appointment of a delegation to Philadelphia, great apprehensions were entertained by the advocates of a general convention, that their efforts would be rendered fruitless by the dissent of this leading member of the confederacy.

The hesitation of Massachusetts lent a sanction to the policy of the governor of New-York. There was in the constitution of that state an energy the more imposing, as contrasted with the weakness of the confederacy. This energy had been increased by a perverted construction of his powers, which concentrated the whole disposal of office in the chief magistrate.

The new congress met in the city of New-York on the second of February, three months of its term having expired, and elected General St. Clair as their president. Though without prerogative or patronage, that officer was understood to represent in his person the majesty of the nation. The appropriations and the ceremonial of his household all indicated such to have been the intention of congress.

In the same public hall was seen Clinton, exhibiting all the authority of his office and his influence over an obedient legislature. The effect on the common mind of withholding those observances which custom has connected with high station, was well understood by Clinton: a marked and studied neglect was manifested by him towards congress, as though he wished them to be regarded rather as intruders upon a sovereign state, than as the Council of the Nation. Yet he at the same time avowed the opinion, that the articles of the confederation were equal to the objects of the union, or with little alteration could be made so, and that the deputies to Annapolis ought to

have confined themselves to the expressed purpose of their errand.

New-York gave the most prominent adversary and advocate of the union. The more obstinate the opposition of Clinton to enlarged views of the interests of the American people, the more zealous and determined were the exertions of Hamilton. All the influence of his attractive manners and generous hospitality was now seen. He mingled daily with the members of the federal government; his house was their constant resort; his conversation was full of the great theme of a more perfect union; and with earnest argument and wit he exposed the inconsistency of men who refused to confer upon congress an adequate fiscal power, for the reason that it was a single body without checks, and yet would seek to thwart every effort to constitute it differently. Having won Virginia in Madison, he broke the opposition of Massachusetts in the person of King, observing to a friend, "I revolutionized his mind."

Though a president had been elected, nine states were not represented in congress until the fourteenth of February. The next day Hamilton delivered his speech upon the impost, in the presence of many of its members, who saw the mute vote, rejecting it, recorded.

It is the part of genius to select the moment to achieve its high purposes; and the day after this vote, notice was given of an intended motion for an instruction to congress to recommend the call of a convention. Its object was stated to be that "of revising the articles of confederation and perpetual union, by such alterations and amendments as *a majority* of the representatives shall judge proper and necessary, to render them adequate to the preservation and *government* of the union."

Had such power been given, 'tis obvious how much more effective and complete the constitution would have been.

This motion was brought forward on the seventeenth, and being so modified, at the instance of the leader of Clinton's party in the assembly, as to omit the words, "a majority," and to substitute that of "support" for "government," was agreed to. After the interval of a day, this instruction was laid before the senate, and it was ordered to be postponed. Of Clinton's majority in that branch, the most prominent persons were Haring and Yates.*. General Schuyler led the opposition. His weight of character would have been insufficient to carry this important resolution, but for the urgent circumstances of the moment. Some of the leaders of the rebellion in Massachusetts had taken refuge in New-York. On the day this resolution was laid before the senate, Schuyler moved that a proclamation should be issued for their apprehension. The fears of congress were also aroused, and on the same day a report then in progress, deferring the enlistment of federal troops, was postponed. Alarmed for the quiet of the state, the senate on the following day, "after considerable debate, by a majority of one vote, concurred in the proposed instruction."

To anticipate intrigue, and gain the advantage of this momentary alarm, Hamilton's report from Annapolis was called up in congress the next day. That body was yet undecided. By some, their sanction of the convention, it was supposed, might stimulate, by others it was alleged that it would impede, the action of the states. Some looked with jealousy at a body so formed; others doubted its constitutionality. Amid this perplexity, the instruction of New-York was presented to them. Though supported by the votes of Massachusetts and Virginia, the recommendation it urged failed, and a resolution of a member from Massachusetts, after being amended, was passed. It re-

* Abraham Yates.

ferred, as a justification for the proceeding, to the provision in the articles of the confederation for their alteration by congress, with the assent of the state legislatures, and to the recent instruction from New-York, and declaring that it was "the most probable mean of establishing in these states a firm national government," sanctioned the contemplated convention.*

Having exerted the influence of New-York upon congress, Hamilton was eager to derive the benefit of the influence of congress upon that state. Five days after, he offered a resolution in the assembly, conforming to the recommendation of congress, for the appointment of five commissioners to meet in convention at Annapolis. This resolution being agreed to, was laid before the senate by Schuyler. That body did not dare to reject it; but, on motion of Haring, the number was reduced from five to three.

Yates then proposed to insert a proviso, that the alterations and provisions to the articles of confederation "should be *not repugnant to*, or *inconsistent with, the constitution of this state.*" This amendment, so decisive of the views of Clinton, was opposed, and was lost by the vote of the presiding officer.†

The resolution then passed the senate, was immediately concurred in by the house, and on the eighth of March, three commissioners, Yates, Hamilton, and Lansing, were appointed—Chief Justice Yates unanimously, Hamilton with two, Lansing with many dissenting voices. As the rule of the confederation of voting by states might be adopted, and as his colleagues were in the views of Clinton, Hamilton proposed, near the end of the session, to add two delegates. He observed, "I think it proper to apprise the

* February 21, 1787.

† Senate Journal of New-York, p. 44-5, February 28, 1787.

house, of the gentlemen on some of whom I wish their choice to fall, and with a view to which I bring forward the present motion. Their abilities and experience in the general affairs of the country cannot but be useful on such an occasion. I mean Mr. Chancellor Livingston, Mr. Duane, Mr. Benson, and Mr. Jay; the particular situation of the latter, may require an observation. His being a servant of congress might seem an objection to the appointment; but surely this objection, if it had any weight, would apply with equal force to a member of that body. In the case of Mr. Lansing, the two houses appear to have thought there was no force in it, and I am persuaded there can be no reason to apply a different rule to Mr. Jay. His knowledge, abilities, tried integrity, and abundant experience in the affairs of the country, foreign and domestic, will not permit us to allow any weight to any objection which would imply a want of confidence in a character that has every title to the fullest confidence."

This motion prevailed in the assembly, but was defeated in the senate.

Hamilton soon after proposed to fix, by law, the sessions of the legislature alternately at Albany and New-York, hoping thus to counterpoise their local influences, and to have it in his power to retain a seat in the assembly. It being known that his professional engagements would not permit him to sojourn at Poughkeepsie, that place was selected for the meeting of the next legislature, and he declined a re-election.

The states of Delaware, the Carolinas, and Georgia, either not alive to, or disregarding the supposed constitutional difficulty, had elected delegates without waiting the action of congress. The address of the Annapolis convention was again submitted to the legislature of Massachusetts, and it was referred to a committee, whose report, from the pen of Samuel Adams, was accepted on the same

day upon which the instructions of New-York were proposed to congress. The delegates were authorized to "consider the trade and commerce of the United States, and how far a uniform system in their commercial intercourse and regulations may be necessary for their common interest and permanent harmony; and also to consider how far it may be necessary to alter any of the articles of the present confederation, so as to render the constitution of the federal government more adequate to the exigencies of the union; and what further powers may be necessary to be vested in congress for the common welfare and security, and with them to form a report for that purpose: such alterations and additions as may be made, to be, however, consistent with the republican spirit and genius of the present articles of confederation, provided that the said commissioners on the part of this commonwealth are hereby particularly instructed by no means to interfere with the fifth article of the confederation, which provides for the *annual election* of delegates in congress, with a power reserved to each state to *recall* its delegates, or any of them, within the year; and which also provides that no person shall be capable of being a delegate for more than three years in any term of six years, or, being a delegate, shall be capable of holding any office under the United States, for which he, or any other for his benefit, should receive any salary, fees, or emoluments of any kind." This embarrassing restriction was removed in consequence of the recent resolution of congress, and, on the ninth of April, five deputies were commissioned with powers conforming to that resolution.*

* On the 7th of January, 1787, King, after speaking of the calamitous events which threatened the country, wrote to Gerry from New-York: "You have seen the Virginia law for the appointment of delegates to a convention in Philadelphia in May.

"General Washington, Wythe, Randolph, Madison, and others, are ap-

The legislature of Connecticut assembled in May. The proposition for a convention was warmly opposed, but was sustained with ability, and prevailed. Late in June, New-Hampshire also chose delegates, and thus all the states were represented with one exception, Rhode Island having refused to co-operate in this great measure.

As the constitution of the United States was a deliberate act of the people, and was formed in reference to their experience of the evils of a mere college of states, it may be interesting to advert briefly to the progress of American experiment in its advances towards that result.

The confederation of the New-England colonies, of the year sixteen hundred and forty-three, was the first effort towards an union of the provinces. It was a league offensive and defensive to provide against impending wars, committing to an annual congress of two delegates from each colony the duty of deliberating upon all matters of peace and common concern; the results of which deliberations were binding upon the confederacy, if three-fourths of its members concurred.

This compact continued forty years; after its dissolu-

pointed for that convention. Pennsylvania has appointed Mifflin, the two Morris's, Fitzsimmons, and three others, on the part of that state. Hamilton, who is a member of the assembly of this state, will exert himself to induce them to send members; Jay, and others, are opposed to the measure, not alone because it is unauthorized, but from an opinion that the result will prove inefficacious. General Washington will not attend. * * * * If Massachusetts should send deputies, for God's sake be careful who are the men; the times are becoming critical; a movement of this nature ought to be carefully observed by every member of the community." He subsequently wrote: "Do you attend the legislature? How will they stand on the plan of a convention at Philadelphia? For a number of reasons, although my sentiments are the same as to the legality of this measure, I think we ought not to oppose, but to coincide with this project. Let the appointments be numerous, and, if possible, let the men have a good knowledge of the constitutions and various interests of the several states, and of the good and bad qualities of the confederation."—Feb. 11, 1787. Life of Gerry.

tion, congresses were held at different times to consult upon measures of common interest, the most important of which, was that of seventeen hundred and fifty-four, convened at the instance of the parent country, to prepare for the contingencies of a war with France.

This congress, having more enlarged views than its predecessors, resolved "that an union of the colonies was absolutely necessary for their preservation," and proposed a plan of federal government, consisting of a general council of delegates to be tri-annually chosen by the provincial assemblies, and a president-general to be appointed by the crown. In this council were to be invested, subject to the ultimate negative of the king, the rights of war and peace with the Indian tribes, the power of raising troops, building forts, equipping vessels of war, and of making laws and laying and levying general duties, imposts, and taxes for those purposes. This projected union was, disapproved, not only by the crown, but by each colonial assembly, from mutual jealousy.

A congress for the purpose of resisting Great Britain, assembled, at the instance of Massachusetts, in seventeen hundred and sixty-five, and digested a bill of rights, in which the sole power of taxation was declared to reside in their own colonial legislatures. This assemblage was the precursor of that of seventeen hundred and seventy-four, which concerted the opposition that terminated in the independence of the United States. Its authority was discretionary and unlimited, until defined by the articles of confederation.

This succinct statement shows that, with the exception of the plan of seventeen hundred and fifty-four, which, had it been carried into effect, might have terminated in a system modelled upon that of Great Britain, no approximation to a general government had been made. Nothing more had been contemplated beyond the delegation of au-

thority for purposes of common defence, under a joint commission, to a general deputation of the colonies.

The momentous problem was now to be solved, whether the affairs of this extensive confederacy were to be carried on by a halting compromise between public duties and abstract state rights, until the union should cease, or whether its humiliation and sufferings had prepared the public mind for the establishment of a vigorous and stable national government.

As it may be interesting hereafter to advert to the opinions of leading individuals at this eventful crisis, they are succinctly given.

Jay was the advocate of a government of proper departments: a governor-general, limited in his prerogatives and duration; an upper and a lower house—the former appointed for life, the latter annually; the governor-general, (to preserve the balance)—with the advice of a council, formed for that only purpose of the great judicial officers—to have a negative on their acts. "Our government," he said, "should, in some degree, be suited to our manners and circumstances, and they, you know, are not strictly democratical." He thought "the more power that was granted to this government, the better," the states retaining only so much as may be necessary for domestic purposes; all their principal officers, civil and military, being commissioned and removable by the national government, which was to derive its authority from the people, the only source of just authority."*

Knox was in favour of a government of three departments: an assembly, chosen for one, two, or three years; a senate for five, six, or seven; the executive to be chosen by the legislature for seven years, liable to impeachment and trial by the senate: all national objects to be designed and

* Jay to Washington, January 7, 1787.

executed by the general government, without any reference to the local governments, and its laws to be enforced upon these governments by a body of armed men.*

Madison, being a member of Congress then sitting at New York, daily impressed with the alarming state of public affairs, is seen watching the direction of public opinion.

On the day that Hamilton's resolution passed for the appointment of commissioners to the proposed convention at Annapolis, he wrote to Washington, stating the hesitation of Congress as to this great measure of relief, and communicating Hamilton's success. "Congress have been much divided and embarrassed on the question, whether their taking an interest in the measure would impede or promote it. On one side, it has been urged, that some of the backward States have scruples against acceding to it without some constitutional sanction; on the other, that other States will consider any interference of Congress as proceeding from the same views which have hitherto excited their jealousies. A vote of the legislature here, entered into yesterday, will *give some relief in the case.*† They have instructed their delegates in Congress to move for the recommendation in question. The vote was carried by a majority of one only in the Senate, and there is room to suspect that the minority were actuated by a dislike to the substance, rather than by any objections against the form of the business. A large majority in the other branch, a few days ago, put a definitive *veto* on the report. It would seem as if the politics of this state are directed by individual interests

* Knox to Washington, January 14, 1787.

† New York, February 21, 1787.

and plans which might be incommoded by the control of an efficient federal government." *

Three days after the appointment of Hamilton and of two other commissioners to this convention, Madison informed Jefferson of it. Eight days later, he again wrote to him, that Washington "prudently withheld his decision as to attending the convention. What may be the result of this political experiment cannot be foreseen. The

* Yet in his Debates—vol. ii., 588, he records this statement purporting to be on the same day, Wednesday, February 21st. "Subsequent to the report," (that of Congress,) "the delegates from New York received instructions from its legislature to move in Congress for a recommendation of a convention; and those from Massachusetts had, it appeared, received information which led them to suppose it was becoming the disposition of the legislature of that State to send deputies to the proposed convention, in case Congress should give their sanction to it. *There was reason to believe, however, from the language of the instruction from New York*, that her *object* was *to obtain a new convention*, under the sanction of Congress, rather than to accede to the one on foot; or *perhaps*, by *dividing the plans of the States* in their appointments, to *frustrate all of them*. The latter suspicion is in some degree countenanced by their refusal of the impost a few days before the instruction passed, and by their other marks of an unfederal disposition. The delegates from New York, in consequence of their instructions, made the motion on the Journal to postpone the Report of the Committee, in order to substitute their own proposition. Those who voted against it considered it as liable to the objection above mentioned. Some who voted for it, particularly Mr. Madison, considered it susceptible of amendment when brought before Congress; and that if Congress interposed in the matter at all, it would be well for them to do it at the instance of a State, rather than spontaneously. This motion being lost, Mr. Dane from Massachusetts, who was at bottom unfriendly to the plan of a convention, and had dissuaded his State from coming into it, brought forward a proposition, in a different form, but liable to the same objection with that from New York." He adds that this resolution was amended as stated in the Journal. Thus Madison is seen contradicting his reported debates by his own letter to Washington, both purporting to be of the *same date*. The objects of this reported statement are obvious—1, to deprive Hamilton of the merit of prompting the action of Congress, by imputing to him a purpose the opposite of the real one.—2, to exempt himself from the responsibility of voting for the motion of Hamilton in all its breadth and extent.

differences which present themselves are, on one side, almost sufficient to *dismay* the most sanguine; whilst, on the other side, the most timid are compelled to encounter them by the mortal diseases of the existing constitution. I think myself, that it will be expedient, in the first place, to lay the foundation of the new system in such a ratification of the people themselves of the several States, as will render it clearly *paramount to their authorities.* Second, over and above the positive power of regulating trade, and sundry other matters on which uniformity is proper,—*to arm* the federal head with a negative in *all cases whatever* on the *local legislatures.* Without this defensive power, experience and reflection have satisfied me, that however ample the federal powers may be made, or however clearly their boundaries may be delineated as proper, they will be easily and continually baffled by the legislative sovereignties of the States. In order to render the exercise of such a *negative prerogative* convenient, an *emanation* of it must be vested in *some set of men within* the several States, so far as to enable them to give a temporary sanction to laws of immediate necessity. Third, to change the principle of representation in the federal system—giving a representation in proportion to numbers. Fourth, to organize the federal powers in such a manner as not to blend together those which ought to be exercised by separate departments." Jefferson replied:* "The negative proposed to be given them on all the acts of the several legislatures, is now, for the first time, suggested to my mind. *Prima facie,* I do not like it. It fails in an essential character, that *the hole and the patch* should be *commensurate.* But this proposes to mend a small hole, by covering the whole garment. Not more than one out of one hundred state acts concern the Confederacy.

* Paris, June 20, 1787.

This proposition, then, in order to give them one degree of power, which they ought to have, gives them ninety-nine more, which they ought not to have, upon a presumption, that they will not exercise the ninety-nine. But upon every act there will be a preliminary question, Does this act concern the Confederacy? And was there ever a proposition so plain, as to pass Congress without a debate?"

Edmund Randolph, then Governor of Virginia, wrote Madison, on the twenty-seventh of March, from Richmond: "At present, I conceive—*First.* That the alterations should be grafted on the old confederation. *Second.* That what is best in itself, not merely what can be obtained from the assemblies, be adopted. *Third.* That the points of power to be granted, be so detached from each other, as to permit a state to reject one part without mutilating the whole. With these objects, ought not some general propositions to be proposed for feeling the pulse of the convention on the subject at large? Ought not an address to accompany the new constitution?"

On the eighth of April, Madison answered: "I think with you that it will be well to retain as much as possible of the old confederation, though I doubt whether it may not be best to work the valuable articles into the new system, instead of grafting the latter in the former." He agreed with him that no material sacrifices should be made to temporary or local systems; approved of an address, but doubted the policy of presenting "the several parts of the reformation in so detached a manner to the States," indicating the probable effect. "In truth, my ideas of a reform strike deeply at the present confederation, and lead to such a systematic change that they scarcely admit of the expedient."

"I hold it for a *fundamental* point, that an *individual independence* of the States is utterly irreconcileable with

the idea of an aggregate sovereignty. I think, at the same time, that a consolidation of the States into a single republic is not less unattainable than it would be inexpedient. Let it be tried, then, whether any middle ground cannot be taken which will support a due supremacy of the national authority, and leave in force the local authorities, so far as they can be subordinately useful." The mode proposed was—"A proportionate representation of the States to their numbers; the national government to be armed with a positive and complete authority in all cases where uniform measures are necessary, retaining the power it now possesses."—"*A negative in all cases whatsoever on the legislative acts of the States as the king of Great Britain heretofore had.* This I conceive to be *essential*, and the least positive abridgement of the state sovereignties. Without such a defensive power, every positive power that can be given on paper will be unavailing. It will also give internal stability to the States."—The extension "of this national supremacy to the judiciary department. A legislature of two branches—one to be chosen by the *legislatures*, or the people at large;—the other of a more select number, holding their appointments for a longer time, going out in rotation. *Perhaps* the negative on the state laws may be most conveniently lodged in this branch. A *Council of Revision* may be expedient, including the great ministerial officers. A national executive will also be necessary. I have *scarcely ventured to form my own opinion* yet, either of the manner in which *it* ought to be constituted, or of the authority with which it ought to be clothed."

The same opinions were disclosed to Washington, with this additional observation: "The *right of Coercion* should be expressly declared. With the resources of commerce in hand, the national administration might

always find means of exerting it either by sea or land. But the difficulty and awkwardness of operating by force on the collective will of a state, render it particularly desirable that the necessity of it might be precluded. Perhaps the negative on the laws might create such a mutuality of dependence between the general and particular authorities, as to answer this purpose; or *perhaps* some defined objects of taxation might be submitted, along with commerce, to the general authority. To give the new system its proper validity and energy, a ratification must be obtained from the people, and not merely from the ordinary authority of the legislatures. This will be the more essential, as inroads on the *existing constitutions* of the States will be unavoidable."

In the previous pages, Hamilton's progressive opinions on this subject have been shown, in his letters to Morris and Duane.

His fear was of partial combinations among the States subversive of the general one. "There is a wide difference," he observed, "between our situation, and that of an empire under one simple form of government, distributed into counties, provinces, or districts, which have no legislatures, but merely magistratical bodies to execute the laws of a common sovereign. There the danger is that the sovereign will have *too much power*, and oppress the parts of which it is composed. In our case, that of an empire composed of confederative States, each with a government completely organized within itself, having all the means to draw its subjects to a close dependence on itself, the danger is directly the reverse." After indicating the necessity of giving to the Confederacy perpetual funds, he mentions "the want of a proper executive," that "congress is properly a deliberative corps, and forgets itself when it attempts to play the executive." His remedy was a convention of all the States, with full authority to conclude

finally upon a general confederation. This confederation to have complete sovereignty, except "as to that part of the internal police which relates to the rights of property and life among individuals, and to raising money by internal taxes."—"It is necessary," he said, "that every thing belonging to this, should be regulated by the state legislatures."

The project of appointing a supreme dictator and vice-dictator, evidently excited his apprehensions. He then saw the necessity of a radical change in the political structure, and in his letter to Morris of the following year, renewing his suggestion of a convention, he states the necessity of a final and irrevocable amendment "of the present futile and senseless confederation." The numbers of the Continentalist of the same period, indicate similar views. He there proposes to give to congress the collection and appropriation of a national revenue.

The next, though not fully developed exposition of his opinions, is seen in his resolutions of seventeen hundred and eighty-three. These contemplated "a federal government, with efficacious authority in all matters of general concern," having its legislative, executive, and judicial authorities deposited in distinct and separate hands—"a federal judicature," with appellate jurisdiction, "taking cognizance of all matters of general concern in the last resort, especially those in which foreign nations and their subjects are interested."

Though these resolutions were "abandoned for want of support" in congress, they could not be without influence on some of its members. That they had such an influence, is to be inferred from the fact that Higginson was prominent in urging Massachusetts to meet in general convention, and that Madison, though restrained by an apprehension of the influence of some powerful opponent in Virginia, individually wished that no objections should be presupposed there.

Washington would have vested congress with absolute powers in all matters relative to the great purposes of war and of general concern, reserving to the states only those of local and internal polity. "I do not conceive," he said,* "that we can exist long as a nation, without having lodged somewhere a power which will pervade the whole union in as energetic a manner as the authority of the state governments extend over the several states. The commotions in the eastern states exhibit a melancholy proof of what our transatlantic foe has predicted; and of another thing, which is still more to be regretted, and is yet more unaccountable, that mankind, when left to themselves, are unfit for their own government. Influence is not government. Thirteen governments, pulling against each other, and all tugging at the federal head, will soon bring ruin on the whole; whereas, a liberal and energetic constitution, well checked, and well watched, to prevent encroachments, might restore us to that degree of respectability and consequence to which we had the fairest prospect of attaining."—"I confess that my opinion of public virtue is so far changed, that I have my doubts whether any system, without means of coercion in the sovereign, will enforce due obedience to the ordinances of a general government; without which, every thing else fails.

"Persuaded I am, that the primary cause of all our disorders *lies in the different state governments*, and in the tenacity of that power which pervades their whole systems."

These sentiments of Washington and Hamilton were those of men familiar with the practical operation of the existing system, in war and in peace; who had seen and felt the evil of conflicting sovereignties, and whose re-

* August 15, 1786.

searches and reflections had compelled them to distrust federate institutions.* Though the opinions which have been quoted were those of men of great weight in the most important members of the union, yet they were not general. The smaller states, while they sought the protection of a more efficient general government, would repel any proposal to relinquish that equal suffrage in the public councils, which they had extorted from their associates amid the pressure of the revolution. In the large states, leading individuals, who did not desire a dissolution of the confederacy, would prefer an increase of the relative influence of their states, but were embarrassed as to the quantity of power to be conferred. Both would incline, as a middle point, to a constitution of enumerated powers, limited to those primary objects, trade and revenue, to which they had found their separate legislation incompetent.

Amid great diversity of opinions and interests, the federal convention met at Philadelphia on the fourteenth of May, seventeen hundred and eighty-seven, when, a majority of states not being represented, it adjourned to the twenty-fifth of that month.

On that day, nine states having appeared, General Washington was, on motion of Robert Morris, chosen to preside, and Major Jackson, at the instance of Hamilton, was elected secretary. A committee, of Wythe, of Virginia, Charles Pinckney, of South Carolina, and Hamilton, were appointed to frame the standing rules for its proceedings. These required seven states to constitute a quorum; that all questions were to be decided by the greater number of states fully represented, and that all committees were to be appointed by ballot. It is to be remarked, that no provision was made in the first instance for secrecy of debate:

* See Washington's Writings, vol. ix. Appendix, No. iv

additional rules were adopted on motion of Pierce Butler, which prescribed "that no copy of any entry on the journal be taken without the leave of the house;" that it should be inspected by members only, and "that nothing spoken in the house be printed, or otherwise published or communicated, without leave." So sedulous was the convention as to the first of these restrictions, that it appears by Madison's report of the debates of the twenty-fifth of July, seventeen hundred and eighty-seven, that a motion that the members of the house might take copies of the resolutions which had been agreed to, was negatived. As to the last, the rule was never rescinded.* In reference to it, a reply, published by Hamilton in seventeen hundred and ninety-two, to anonymous charges,† containing a misrepresentation of his course in the convention, and stated by him "to be of a nature to speak the malignity and turpitude of the accuser, denoting clearly the personal enemy in the garb of the political opponent," mentions "that the deliberations of the convention, which were carried on in private, were to *remain unmolested.* And every prudent man," he observed, "must be convinced of the propriety of the one and the other. Had the deliberations been open while going on, the clamours of faction would have prevented any satisfactory result. Had they *been afterwards disclosed*, much food would have been afforded to inflammatory declamation. Propositions, made without due reflection, and perhaps abandoned by the proposers themselves on more mature reflection, would have been handles for a profusion of ill-natured accusation."

Washington gave as a reason "for not relating any of the proceedings, that the rules of the convention *prevented him.* And nothing," he said, "being suffered to transpire,

* "All the proceedings during the treaty" of union between England and Scotland were "kept secret."—*Smollett's Queen Anne.*

† In the National Gazette, established by Jefferson and Madison.

no minutes of the proceedings *have been*, or *will be inserted in this diary.*"*

This solemn obligation, which no act of any other body could annul, was, until recently, sacredly adhered to by every member of the convention except Luther Martin, who did not disclose the opinions of individuals, but gave a statement of the proceedings to the legislature of Maryland. Notes were taken by Chief Justice Yates, who, "though often solicited, refused to permit them to be published, not only because they were originally not written for the public eye, but because he conceived himself under *honourable obligations to withhold their publication.*"†

Madison, it appears, regarded this obligation in a different light. "The curiosity," he observes, "I had felt (as to the most distinguished confederacies of antiquity,) "*determined* me to *preserve*, as far as I could, an exact account of what might pass in the convention while executing its trust; with the magnitude of which I was duly impressed, as I was by the gratification promised to *future curiosity*, by an *authentic exhibition* of the objects, the opinions, and the reasonings from which the new system of government was to receive its peculiar structure and organization." He adds, that "with a very few exceptions the speeches were neither furnished, nor revised, nor sanctioned by the speakers." Among these exceptions, he includes the speech of Hamilton, "who," he says, "happened to call on me when putting the *last hand* to it, and *who acknowledged its fidelity*, without suggesting more than *a very few verbal alterations*, which were made."‡

* 9 Washington, 541.

† Secret Proceedings, p. 306.—These were copied by Lansing, disposed of by the widow of Yates, and published by *Genet* (the former minister of France) in 1821.

‡ Debates in the Federal Convention, v. 2, p. 717.—Madison survived every member of that body.

Believing, nevertheless, that no "authentic exhibition" of these debates exists, a full view of the formation of the constitution will not be attempted. Contemporary expositions of it, minutes taken by Hamilton in the course of and for the purpose of debate, which will be only resorted to as far as absolutely necessary for his vindication, public statements extorted from him in self-defence, and the notes of Yates previously referred to, are the only materials at command. To cull from these such facts as may enable some faint judgment to be formed of Hamilton's agency in framing the constitution, or in imparting to it its character, of his position in the convention, of his theoretical opinions, plans, and propositions, will be the sole aim of the following narrative.

On the twenty-ninth of May, after some preliminary remarks, fifteen propositions, concerning the American confederation and the establishment of a national government were laid before the convention by Edmund Randolph, then governor of Virginia.*

It then decided to resolve itself into a committee of the whole on the succeeding day for their consideration, when Charles Pinckney,† of South Carolina, addressed the convention. After depicting the alarming situation of the country, a situation to be attributed "to the weakness and impropriety of a government founded on mistaken principles, incapable of combining the various interests it is intended to unite and support, and destitute of that force and energy without which no government can exist, he proceeded to indicate the principal defects of the confedera-

* Madison, 715, says: "The resolutions introduced by Governor Randolph were the result of a consultation on the subject, with an understanding that they left all the deputies entirely open to the lights of discussion, and free to concur in any alterations and modifications which their reflections and judgments might approve."

† Not General Charles Cotesworth Pinckney.

tion—defects so great that he was convinced that it would be politic in the convention to determine that they will consider the subject de novo; that they will pay no further attention to the confederation than to consider it as good materials, and view themselves at liberty to form and recommend such a plan as, from their knowledge of the temper of the people, and the resources of the states, will be most likely to render our government firm and united."

With these prefatory remarks, Pinckney submitted his plan of government. He then proceeded to comment upon it. From these comments it appears that he contemplated a legislature of two branches: the first to consist of delegates chosen by the *states*, in numbers according to their relative importance, to vote per capita; a senate, elected by the house of delegates, upon "proportionable principles, which, though rotative, will give that body a sufficient degree of stability and independence;" each class to be elected for four years. The executive to be appointed septennially, but re-eligible. If septennial appointments were supposed to be too frequent, Pinckney stated that he would have "no objection to elect him for a longer term." He was to have a council of revision, and among his other powers "that of convening and proroguing the legislature upon special occasions;" and of appointing "all officers except judges and foreign ministers." A supreme judiciary to be instituted by congress, to take cognizance of all officers of the United States, of questions arising on the law of nations, the construction of treaties, and of the regulations of congress in pursuance of their powers, and also courts of admiralty in the several states.

Congress were to have the exclusive powers then vested in the confederation, and also the regulation of commerce; the raising money by impost, and of troops in peace and war; with a proviso that, as to all cases which then re-

quired the assent of nine states, and as to acts regulating trade, and for levying an impost or raising troops, "the assent of two-thirds of both houses should be required."

After this exposition of Pinckney's plan,* it was resolved that the Virginia propositions should with it be referred to a committee of the whole convention.

The discussion of the first six occupied two days. The result was a declaration that "a national government ought to be established, consisting of a supreme legislative, judiciary, and executive;" all the states concurring except Connecticut and New-York—Hamilton voting in favour of the proposition. The question whether the right of suffrage in the national legislature ought to be apportioned to the quotas of contribution, or to the number of free inhabitants, (Hamilton urging the latter,) was postponed. Pennsylvania alone opposed the division of the legislature into two branches. A majority were in favour of the election of the first branch by the people, as had been the practice of

* This statement is derived from a pamphlet published in 1788, entitled, "Observations on the plan of government submitted to the federal convention, by Mr. Charles Pinckney."—No. 2687 of select tracts of New-York Historical Society. A comparison of the plan in the Observations, with that on the journals, *furnished by Pinckney*, shows great dissimilarity. The "observations" have no reference to an election of the house of representatives by the *people*. On the contrary, it will be perceived by the journal of the sixth of June, that Pinckney proposed their election by the state legislatures. The power of appointment is given, in the "observations," to the executive, *without the consent of the senate*, which is required by the journal plan. They propose a council of revision, not contained in the journal plan; gave the decision of territorial disputes to a court constituted as directed in the confederation. The plan on the journal vests it in the senate. The journal plan requires the assent of two-thirds of the members of congress present only in the enactment of laws regulating commerce. The "observations" speak of *seventeen* articles. The journal plan contains *sixteen*. The "observations" refer to the eighth article as relating to the post office. The eighth article of the journal plan relates solely to the executive power. The numerical discrepancy occurs in other instances.

Rhode Island and Connecticut under the confederation. The proposition that the second should be chosen by the first branch, out of persons appointed by the state legislatures, was rejected; and it was declared that its members should be elected by the state legislatures. The sixth resolve gave to each branch the right of originating acts, and conferred on the national legislature the legislative rights vested in congress by the confederation, and empowered it to legislate in all cases to which the separate states were incompetent, or in which the harmony of the United States may be interrupted by the exercise of individual legislation, and to negative all laws of the states contravening, in its opinion, the articles of union, or any treaties subsisting under the authority of the union—the last clause being suggested by Franklin. It was approved in this form, after rejecting a section authorizing a resort to the force of the union against any delinquent state.

The seventh resolution was considered on the first of June. It declared that a national executive be chosen by the legislature for a term of years, with a fixed compensation, not to be increased or diminished so as to affect the existing magistracy, which was to be ineligible, and, besides a general authority to execute the national laws, that it ought to enjoy the executive rights vested in congress by the confederation.

A motion of Wilson, that it should consist of a single person, was postponed, when Madison, urging that its powers ought first to be defined, offered an amendment conferring on it the power to carry into execution the national laws, to appoint to offices in cases not otherwise provided for, and to execute such other powers, not legislative or judiciary in their nature, as may from time to time be delegated by the national legislature. The powers to execute the laws, and to appoint to office, were approved; but the last indefinite clause was rejected, Massachusetts,

Virginia, and South Carolina voting for it. The term of office was next established at seven years.

Until this period of the proceedings, New-York was represented by Hamilton and Yates, but on the second of June, Lansing having taken his seat, Hamilton's vote was merged in that of his colleagues.

Immediately after, a proposal was made to postpone the resolution respecting the executive, in order to take up that relating to the second branch of the legislature: only three states voted in its favour. A motion was then made by Wilson, that the executive magistracy should be elected by electors chosen in districts of the states, in whom the executive authority of the government should be vested: This motion was negatived, seven states being against it; the vote of New-York divided, and its election by the national legislature being approved. To control this great object of jealousy, a proposition was made that it should be removable by the national legislature. This was defeated, but it was declared to be ineligible a second time; and, instead of giving the legislature a general power of removal, a provision, derived from the constitution of North Carolina, rendering the executive removable on impeachment, and conviction of malpractice or neglect of duty, was, at the suggestion of Williamson, substituted. It was again moved that the executive should consist of one person. The subject was now discussed at large, Butler, Gerry, Charles Pinckney, Sherman, and Wilson being in favour of a single, Madison and Randolph of a plural executive.

In the letters written prior to the meeting of the convention by Madison to Washington in reference to the executive, he is seen to have stated that he had "scarcely ventured to form his own opinion *yet*, either of the manner in which *it* ought to be constituted, or of the authorities with which *it* ought to be clothed." This language

would seem to imply that he then contemplated a *plural* magistracy. He now observed, "the way to prevent a majority from having an interest to oppress the minority, is to enlarge the sphere." "Elective monarchies are turbulent and unhappy." "Men are unwilling to admit so decided a superiority of merit in an individual, as to accede to his appointment to so pre-eminent a station. If *several* are admitted, as there will be many competitors of equal merit, they may be all included—contention prevented, and the republican genius consulted."*

Randolph followed. He remarked, that "the situation of this country was peculiar. The people were taught an aversion to monarchy; all their constitutions were opposed to it. The fixed character of the people was opposed to it. If proposed, it will prevent a fair discussion of the plan. Why cannot three execute? Great exertions were only requisite on particular occasions. Safety to liberty was the great object; legislatures may appoint a dictator. He spoke of the seeds of destruction; slaves might be easily enlisted. The executive may appoint men devoted to them, and even bribe the legislature by offices. The chief magistrate will also be free from impeachment."

Wilson answered, alleging that the extent of the country, and the diversity of manners, precluded the dangers alluded to. "A confederated republic," he observed, "unites the advantages and banishes the disadvantages of other kinds of government. Rendering the executive ineligible," he declared, "was an infringement of the right of election."

Bedford concurred in the opinion, that the executive should be re-eligible. He remarked, that "peculiar talents were requisite for the executive; therefore, there ought to be an opportunity of ascertaining his talents, and therefore frequent change."

* Hamilton's MSS. notes, vol. 1, p. 74.—Madison does not give these remarks.—Reports of 1st and 2d June, vol. 2, Madison Papers, pp. 762–783.

The question being taken, seven states voted in favour of a single executive. New-York, (Yates and Lansing giving the vote,) Delaware, and Maryland in the negative.

The eighth resolve proposed a council of revision, to be composed of the executive and of a part of the judiciary. It was to be empowered to revise every act of the national legislature before it should operate, and of the particular legislatures of each state, before a negative thereon should be final. The dissent of the council to amount to a rejection, unless the act of the national legislature was again passed, or that of a particular state should be again negatived by the vote of a certain number of the members of each branch. Madison was zealous for this revisionary council. Hamilton was averse to it, from the "danger that the executive, by too frequent communication with the judicial, may corrupt it." As to the argument that this negative would not be used, he remarked, "it would go so far as to prove that the revisionary power would not be exercised, and therefore was useless." He seconded a motion of Wilson to vest an unqualified negative in the executive. This proposal was rejected, but a modified provision passed, giving this negative to the executive, unless two-thirds of the legislature should concur, thus dispensing with the council of revision.

The ninth resolve contemplated a national judiciary, to hold during good behaviour, to receive a compensation not to be increased or diminished so as to affect the incumbents. It was to consist of a supreme appellate, and inferior tribunals, whose jurisdiction was to extend to piracies and felonies on the seas, and captures from an enemy; to cases in which foreigners or citizens of other states might be interested, or which respected the collection of the revenue; to impeachments of any national officer, and questions involving the national peace and harmony. Wilson moved that the judiciary should be appointed by the

executive. Madison was opposed to this. He thought that the executive should by no means make the appointment, and pursuing the policy of Virginia, which gave the appointment to the legislature, he proposed to vest it in the second branch.

A provision for the admission of new states, was in the next place adopted. On the sixth of June, proposals to give the election of the first branch of the national legislature to those of the several states, and to annex a council of revision to the executive, to be composed of the national judiciary, were renewed, and failed. It was urged in favour of the first proposition, that if "the legislatures did not partake in the appointment, they would be more jealous of the general government; *and* that the state legislatures ought also to elect the senators, so as to bring into it the sense of the state governments," and thus "lead to a more respectable choice."

Madison contended, that at least one branch should be chosen by the people. He stated that* there were "two principles on which republics ought to be constituted. One, that they should have such an extent as to render combinations on the ground of interest difficult. The other, by a process of election calculated to refine the representation of the people."†

* Hamilton MSS. v. 1, p. 75.

† In reference to these principles, this comment by Hamilton is preserved.

"Maddison's theory. Answer:—There is truth in both these principles, but they do not conclude as strongly as he supposes. The assembly, when chosen, will meet in one room, if they are drawn from half the globe, and will be liable to all the passions of popular assemblies.

"If more *minute links* are wanting, others will supply them. Distinctions of eastern, middle, and southern states, will come into view, between commercial and non-commercial states. Imaginary lines will influence, &c.

"The human mind is prone to limit its view to near and local objects. Paper money is capable of giving a general impulse. It is easy to conceive a popular sentiment pervading the eastern states." Madison also observed,

The election of the second branch by the state legislatures was proposed, and, after the rejection of a motion that it should be chosen by the people, was passed unanimously.

The term of service of the first branch was fixed at three, that of the second branch at seven years. The members were to receive fixed stipends out of the national treasury, and to be ineligible to any office established by a state, or by the United States, (except those peculiarly belonging to the functions of the respective branch,) during the term of service, and under the national government for one year after its expiration. The restriction on their re-eligibility, and the right to recall those of the second branch, were expunged. An important motion was now made as to the power to be confided to the legislature. It was proposed by Charles Pinckney, and seconded by Madison, that it should have a negative on *all* laws of the states which to it shall appear improper. This was sustained by only three states—Massachusetts, Pennsylvania, and Virginia.

After some discussion of the mode of appointing the executive, the rule of suffrage now existing as to the choice of the first branch of the legislature was adopted, and a proposal was made to give to each state an equal vote in the second branch.

Wilson and Hamilton urged that the rule adopted as to

"that large districts are less liable to be influenced by factious demagogues than small." "This," Hamilton noted, "is in some degree true, but not so generally as may be supposed. Frequently small portions of large districts carry elections. An influential demagogue will give an impulse to the whole. Demagogues are not always *inconsiderable* persons. Patricians were frequently demagogues. In large districts, characters are less known, and a less active interest is taken in them."

"One great defect of our state governments is, that they do not present objects sufficiently interesting to the human mind."

the first should govern in the choice of the second branch. They prevailed for the moment. A guarantee of a republican constitution, and of its existing laws to each state, was unanimously approved. It was declared that a provision ought to be made for the amendment of the constitution; and that the legislative, executive, and judiciary of each state ought to be bound by oath to support the articles of union. After an approval of the fifteenth resolve, that the amendments to the confederation with the approbation of congress should be submitted to an assembly, or assemblies, elected by the people, the Virginia resolutions were reported to the house on the thirteenth of June.

During the discussion of these resolutions, such of the delegates from Connecticut, New-York, New-Jersey, Delaware, and Maryland, as were in favour of a larger retention of power in the states, prepared a series of resolves, which were on the fifteenth of June submitted by Paterson. They were designated "the Jersey plan." This plan contemplated an enlargement of the powers of congress, without any change in the structure of the government—an apportionment of the ratio of contribution to the population—the election by congress of a plural federal executive—a federal judiciary to be appointed by the executive, to hold during good behaviour—a provision rendering the acts of congress and treaties the supreme law, with compulsory authority over the states by the national force.

This scheme being referred to a committee of the whole house, with a view to bring the respective systems into full contrast, it was moved by Rutledge, seconded by Hamilton, that the amended resolutions from Virginia be recommitted. The broad question, whether a national government, or mere articles of confederation were to be recommended, was now presented. The debate was open-

ed on the sixteenth of June, by Lansing. He stated, that the national system proposed to draw the representation from the whole body of the people, without regard to the state sovereignties. That the substitute proposed to preserve the state sovereignties. What were the powers under which the convention acted? "Different legislatures had a different object," but the general purpose was to "revise the confederation." "Independent states cannot be supposed to be willing to annihilate the states." "The state of New-York would not have agreed to send members on this ground."

It is "in vain," he said, "to devise systems, however good, which will not be adopted." "If convulsions happen, nothing we can do will give them a direction. The legislatures cannot be expected to make such a sacrifice." "The wisest men in forming a system from theory are apt to be mistaken." "The present national government has no precedent, or experience to support it," and the "general opinion was, that certain *additional* powers ought to be given to *congress*."

He was followed by Patterson, who observed, first, that their plan accorded with their powers; second, that it accords with the "sentiments of the people. If the confederation was radically defective, we ought to return to our states and tell them so. He came not here to sport sentiments of his own, but to speak the sense of his constituents." The "states treat as equal; the present compact gives one *vote* to each state. By the articles of the confederation, 'alterations are to be made by congress, and all the legislatures.' All the parties to a contract must assent to its dissolution. The states collectively have advantages, in which the smaller states do not participate; therefore individual rules do not apply."

The "force of government," he observed, "will not depend on the proportion of representation, but on the quan-

tity of power." "A check is not necessary in a general government of communities, but in an individual state the spirit of faction is to be checked." "How have congress hitherto conducted themselves? The people approve of congress, but think they have not power enough."

On a comparison of the different schemes of government then before the convention, it is seen that Pinckney would have clothed the legislature with the powers vested in congress by the confederation, and also with the regulation of commerce, the raising money by impost, and with the control of the national force. The Virginia plan would have conferred on the government powers supreme in all questions of national interest; a negative on the laws of the states, with an express declaration of a power to exert the common force against a delinquent state.

Pinckney also proposed a single executive, while the Virginia plan, having confided unlimited powers to the legislature, would have vested the execution of those powers in a plural magistracy, ineligible a second time, controlled by a council of revision constituted from the judiciary, which would thus have become a political agent—those powers to be exercised by a resort to force; to obviate which, Madison is seen to have proposed a negative on the laws of the states.

The Jersey plan was more objectionable. It created a single legislative body, with the command of the purse and the sword; derived its authority from the states; established an equality of suffrage; proposed that a minority should govern; contemplated partial objects of legislation;* gave no negative upon that of the states; created a plural executive, removable on the application of a majority of the executives of the states, without any negative on the national legislature; and a judiciary, to be appoint-

* The revenue was to be derived from imposts, stamps, and postage.

ed by the executive, with power to try impeachments of federal officers, but without any other original jurisdiction, and without inferior tribunals.

Such were the forms of government in contemplation for an empire of almost boundless territory, and destined to contain a countless population.

As neither of these forms was adopted, and as the final result was a compromise, it becomes necessary, in order to judge correctly of the extent of Hamilton's influence upon the character of that compromise, to trace the successive opinions of leading members of the convention.

With this view, it will be remarked, while the plan of Madison and Randolph submitted it as an open question, whether "the right of suffrage in the national legislature ought to be proportioned to the quotas of contribution, or to the number of free inhabitants," that Hamilton was the first to urge the latter as the true basis of a republican government.*

Hamilton urged the choice of the first branch by the people—Madison was undecided, if "by the people or by the legislatures," and while Hamilton would have derived the Senate also from the people,† Madison preferred that it should be chosen by the first branch.

The proposition of Virginia gave the choice of the executive department of the government to the national legislature. Hamilton, pursuing the great principle of a popular government, was in favour of an executive to be chosen by the people in districts through the medium of electors.

Madison was the advocate of a plural executive, and

* Journal of Fed. Con., pp. 67–83. "It was moved by Mr. Hamilton, seconded by Mr. Spaight, that the resolution be altered so as to read: Resolved, that the rights of suffrage in the national legislature ought to be proportioned to the number of *free inhabitants*."

† Journal, 112.

would have associated with it a revisionary council, to be formed of the national judiciary, having a qualified negative. Hamilton, on the other hand, would have imposed on a single executive an undivided responsibility, without a council of revision. He would have given the appointment of the judiciary to the executive, and would have charged it solely with judicial duties. The judiciary of Madison was to be appointed by the second branch, to be connected with the executive, to act politically as its controlling council, and also as the court of impeachments on the national officers.

Passing from the structure to the powers of the government—while Hamilton would have provided that the executive should take care that the laws were faithfully executed, Madison would have authorized the legislature to delegate to it, from time to time, such other powers, not legislative or judiciary in their nature, as it might choose;* and would have given it a negative on the laws of the states.

As to the national legislature, he would have empowered it to "negative all laws" of the states "which to them shall appear improper."† It has been seen that while he thought that perhaps this negative "might create a mutual dependence between the general and particular authorities," and thus "that the necessity of operating by force on the collective will of a state might be precluded," he said, "the right of coercion should be expressly declared." This was by far the highest toned form of government submitted to the convention, and as it intermingled injuriously the different departments, and derived them all from the first legislative branch, would have resulted in an odious and intolerable tyranny, in which the executive and senate would have been the creatures and mere instruments

* Journal, p. 89. † Ibid. p. 107.

of the arbitrary will of the popular branch of the legislature. In two important particulars, a common sentiment is seen in the convention—the determination to lay a republican basis in the pledge by an *unanimous* vote to "guarantee to each state a republican constitution, and its existing laws," and that the national judiciary should hold their offices during good behavior.

CHAPTER XLVI.

To establish a stable and enduring government of competent powers, founded on the consent of the people, and to combine a vigorous execution of the laws with a due regard to liberty, by a judicious application of a system of checks as far as was practicable, consistently with the genius of a republic, were the great objects to be sought. Neither of the plans before the convention promised to effect these objects.

In that of Virginia, although the resort to "force against a member failing to fulfill its duty," early proposed, was not incorporated, yet the conflicts to ensue between a general government so constituted and of such power, and the governments of the states, so little impaired, were inevitable.

The adoption of such a plan would have been, as Hamilton had before stated, "to enact a CIVIL WAR." The influence exerted by his arguments in exposing this inconsistency, was powerful in preparing the way for the

plan finally adopted in the different organization of the senate and house of representatives.*

But the conflicts between the National Government and the State sovereignties were only a greater evil than the consequences to follow from the deposit of almost unlimited power in a National legislature, of which both branches were derived from a common source, without the natural check which he contemplated, in the different terms of office.

The Jersey plan would have been equally mischievous. The one plan was tyranny—both involved, certain anarchy. Neither could have been adopted. The final struggle between their respective advocates was impending, almost instant. A dissolution of the convention, and a dissolution of the frail union were at hand. Hamilton saw it

* History of the Constitution of the United States, by G. T. Curtis, ii. 101 to 106: "Surely, it can be no impeachment of the wisdom or the statesmanship of this great man, that, at a time when a large majority of the convention were seeking to establish a purely national system, founded on a proportionate representation of the people of the states, he should have pointed out the inconsistencies of such a plan, and should have endeavored to bring it into greater conformity with the theory which so many of the members and so many of the States had determined to adopt. It seems rather to be a proof of the deep sagacity which had always marked his opinions and conduct, that he should have foreseen the inevitable collisions between the powers of a national government, so constituted, and the powers of the States. The whole experience of the past had taught him to anticipate such conflicts, and the theory of a purely national government, when applied by the arrangement now proposed, rendered it certain that these conflicts must and would increase. That theory could only be put in practice by transferring the whole legislative powers of the people of the States to the national government. This he would have preferred, and, in this, looking from the point of view at which he then stood, and considering the actual position of the subject, he undoubtedly was right." "The choice seemed to be between a *purely national* and a *purely federal system.*"

all. What was to be done? His own position in the convention was that of isolation. The policy of Clinton had placed him there to become a cipher and a sacrifice. He felt it all, but he felt, with the cold palsy of the State upon his vote, that the warm life of a nation was in his heart—a heart ever alive to the sense of duty and of honor. In these he found the path of courageous wisdom. He resolved boldly, frankly, without reserve, to announce his views of such a constitution as was best, and to present a plan, in the approach to which might be formed, as far as could be, a safe, practicable, durable government, resting on the power of the American people.

The convention had unanimously decreed a Republican government. No other form was thought of or desired. In his plan, embodying such propositions as had been approved, and were consistent with his own opinions, it will be seen, that, while seeking to blend with it the advantages of a monarchy, he strictly adhered to the republican theory.

Upon a resolution of Dickinson, "that the articles of confederation ought to be revised and amended, so as to render the government of the United States adequate to the exigencies, the preservation, and the prosperity of the union," Hamilton addressed the committee.

As no report approaching to accuracy has been given of this memorable speech, the brief, as it exists in his handwriting, is given.

INTRODUCTION.

I. Importance of the occasion.

II. A solid *plan*, without regard to temporary *opinions*.

III. If an ineffectual plan be again proposed, it will beget despair, and no government will grow out of CONSENT.

IV. There seem to be but three lines of conduct.

I. A league offensive, treaty of commerce, and apportionment of the public debt.

II. An amendment of the present confederation, by adding such powers as the public mind seems nearest being matured to grant.

III. The forming a new government to pervade the whole, with decisive powers; in short, with complete sovereignty.

Last seems to be the prevailing sentiment.

I. Its practicability to be examined.

Immense extent unfavourable to representation.

Vast expense.

Double sets of officers.

Difficulty of judging of local circumstances.

Distance has a physical effect on men's minds.

Difficulty of drawing proper characters from home.

Execution of laws, feeble at a distance from government—particularly in the collection of revenue.

Sentiment of obedience—opinion.

I. Objections to the present confederation.

Intrusts the great interests of the nation to hands incapable of managing them.

All matters in which foreigners are concerned.

The care of the public peace—debts.

Power of treaty, without power of execution.

Common defence, without power to raise troops—have a fleet—raise money.

Power to contract debts, without the power to pay.

These great interests of the state must be well managed, or the public prosperity must be the victim.

Legislates upon communities.

Where the legislatures are to act, they will deliberate.

To ask money, not to collect it, and by an unjust measure.

No sanction!!

Amendment of confederation according to present ideas.

1. Difficult because not agreed upon any thing. Ex— *Impost.*

Commerce—different *theories.*

To ascertain the practicability of this, let us examine the principles of civil obedience.

SUPPORTS OF GOVERNMENT.

I. Interest to support it.
II. Opinion of utility and necessity.
III. Habitual sense of obligation.
IV. Force.
V. Influence.

I. Interest—particular and general interests.

Esprit de corps.

Vox populi, *Vox* Dei.

II. Opinion of utility and necessity.

First will decrease with the growth of the *states.*

Necessity.

This does not apply to federal government.

This may dissolve, and yet the order of the community continue.

Anarchy not a necessary consequence.

III. HABITUAL sense of obligation.

This results from administration of private justice.

Demand of service or money odious.

IV. FORCE—of two kinds.

COERCION of laws—COERCION of arms.

First does *not exist*—and the last *useless.*

Attempt to use it, a war between the states.

Foreign aid.

Delinquency not confined to one.

V. INFLUENCE—

1. From municipal jurisdiction.
2. Appointment of officers.
3. Military jurisdiction.
4. Fiscal jurisdiction.

All these now reside in (*the*) particular states.

Their governments are the chief sources of honour and emolument.

AMBITION—AVARICE.

To effect any thing, passions must be turned towards the general government.

Present confederation cannot be amended, unless the most important powers be given to congress constituted as they are.

This would be liable to all (the) objections against any form of general government, with the addition of the want of *checks*.

Perpetual effort in each member.

Influence of individuals in office to excite jealousy and clamour—state leaders.

Experience corresponds.

Grecian republics.

Demosthenes says—Athens seventy-three years—Lacedæmon twenty-seven—Thebans after battle of Leuctra.

Phocions—consecrated ground—Philip, &c.

Germanic empire.

Charlemagne and his successors.

Diet—recesses.

ELECTORS now seven, excluding others.

Swiss Cantons.

Two diets.

Opposite alliances.

Berne—Lucerne.

To strengthen the federal government, powers too great must be given to a single hand.

League offensive and defensive, &c.

Particular governments might exert themselves, &c.

But liable to usual vicissi(*tudes.*)

Internal peace affected.

Proximity of situation—natural enemies.

Partial confederacies from unequal extent.

Power inspires ambition.

Weakness begets jealousy.

Western territory.

Objn.—Genius of republics pacific.

Answer. Jealousy of commerce as well as jealousy of power, begets war.

Sparta—Athens—Thebes—Rome—Carthage—Venice—Hanseatic League.

England as many popular as royal wars.

Lewis the XIV.—*Austria*—Bourbons—William and Anne.

Wars depend upon trifling circumstances.

Where—Dutchess of Marlborough's glove.

Foreign conquest.

Dismemberment—Poland.

Foreign influence.

Distractions set afloat vicious humours.

Standing armies by dissensions.

Domestic factions—Montesquieu.

Monarchy in southern states.

☞ Federal rights—*Fisheries.*

Wars—destructive.

Loss of advantages.

Foreign nations would not respect our rights nor grant us reciprocity.

Would reduce us to a passive commerce.

Fisheries—navigation of the lakes—Mississippi—Fleet.

The general government must, in this case, not only have a strong soul, but *strong organs* by which that soul is to operate.

Here I shall give my sentiments of the best form of government—not as a thing attainable by us, but as a model which we ought to approach as near as possible.

British constitution best form.

Aristotle—Cicero—Montesquieu—Neckar.*

Society naturally divides itself into two political divisions—the *few* and the *many*, who have distinct interests.

If government in the hands of the *few*, they will tyrannize over the many.

If (*in*) the hands of the many, they will tyrannize over the few. It ought to be in the hands of both; and they should be separated.

This separation must be permanent.

Representation alone will not do.

Demagogues will generally prevail.

And if separated, they will need a mutual check.

This check is a monarch.

Each principle ought to exist in full force, or it will not answer its end.

The democracy must be derived immediately from the people.

The aristocracy ought to be entirely separated; their power should be permanent, and they should have the *caritas liberorum.*

* In Madison's very imperfect report of this speech, the authority of Neckar is alone adduced. The opinion entertained of him at that time, is seen in the eloquent commendation of Edmund Burke. "I behold a fabric laid on the natural and solid foundation of trust and confidence among men, and rising by fair gradation, order above order, according to the just rules of symmetry and art—principle, method, regularity, economy, frugality, justice to individuals and care of the people are the resources with which France makes war upon Great Britain.—The minister who does these things is a great man."

They should be so circumstanced that they can have no interest in a change—as to have an effectual weight in the constitution.

Their duration should be the earnest of wisdom and stability.

'Tis essential there should be a permanent will in a community.

Vox populi, vox Dei.

Source of government—the unreasonableness of the people—separate interests—debtors and creditors, &c.

There ought to be a principle in government capable of resisting the popular current.

No periodical duration will come up to this.

This will always imply hopes and fears.

Creature and Creator.

Popular assemblies governed by a few individuals.

These individuals seeing their dissolution approach, will sacrifice.

The principle of representation will influence.

The most popular branch will acquire an influence over the other.

The other may check in ordinary cases, in which there is no strong public passion; but it will not in cases where there is—the cases in which such a principle is most necessary.

☞ Suppose duration seven years, and rotation.

One-seventh will have only one year to serve.

One-seventh——————two years.

One-seventh——————three years.

One-seventh——————four years.

A majority will look to a dissolution in four years by instalments.

The monarch must have proportional strength. He ought to be hereditary, and to have so much power, that it will not be his interest to risk much to acquire more.

The advantage of a monarch is this—he is above corruption—he must always intend, in respect to foreign nations, the true interest and glory of the people.

Republics liable to foreign corruption and intrigue—Holland—Athens.

Effect of the British government.

A vigorous execution of the laws—and a vigorous defence of the people, will result.

Better chance for a good administration.

It is said a republican government does not admit a vigorous execution.

It is therefore bad; for the goodness of a government consists in a vigorous execution.

The principle chiefly intended to be established is this—that there must be a permanent *will.*

Gentlemen say we need to be rescued from the democracy. But what the means proposed?

A democratic assembly is to be checked by a democratic senate, and both these by a democratic chief magistrate.

The end will not be answered—the means will not be equal to the object.

It will, therefore, be feeble and inefficient.

RECAPITULATION.

I. Impossible to secure the union by any modification of fœderal government.

II. League, offensive and defensive, full of certain evils and greater dangers.

III. General government, very difficult, if not impracticable, liable to various objections.

What is to be done?

Answer. Balance inconveniences and dangers, and choose that which seems to have the fewest objections.

Expense admits of this answer. The expense of the state governments will be proportionably diminished.

Interference of officers not so great, because the objects of the general government and the particular ones will not be the same—Finance—Administration of private justice. Energy will not be wanting in essential points, because the administration of private justice will be carried home to men's doors by the particular governments.

And the revenues may be collected from imposts, excises, &c. If necessary to go further, the general government may make use of the particular governments.

The attendance of members near the seat of government may be had in the lower branch.

And the upper branch may be so constructed as to induce the attendance of members from any part.

But this proves that the government must be so constituted as to offer strong motives.

In short, to interest all the *passions* of individuals.

And turn them into that channel.

After having stated his theoretical opinion of government, Hamilton declared "that the republican theory ought to be adhered to in this country, as long as there was any chance to its success—that the idea of a perfect equality of political rights among the citizens, exclusive of all permanent or hereditary distinctions, was of a nature to engage the good wishes of every good man, whatever might be his theoretic doubts; that it merited his best efforts to give success to it in practice; that hitherto, from an incompetent structure of the government, it had not had a fair trial, and that the endeavour ought then to be to secure to it a better chance of success by a government more capable of energy and order."*

The speech of which this brief is given, occupied in the delivery between five and six hours, and was pronounced

* Hamilton to Washington, post.

by a competent judge,* "the most able and impressive he had ever heard."

In the course of this speech, he read his plan of government, an outline of which is given in a few general

* Gouverneur Morris.

† On a comparison of this brief with Madison's report, it is not possible to give credence to his statement, "that Hamilton happened to call upon him when putting the last hand to it, who acknowledged its *fidelity*, without suggesting more than a *very few verbal alterations*, which were made."

Neither in the general outline, nor in the subdivisions, does it approach so near to accuracy as by possibility to have received the sanction of its author. A few of the discrepancies will be indicated.

In Madison's report of the preliminary remarks, to show that the states may have had in view a reference to the people at large, he ascribes this observation to Hamilton:—"In the senate of New-York a proviso was moved, that no *act of the convention should be binding until it should be referred to the people*, and ratified; and the motion was *lost* by a *single voice only*; the reason assigned being, that it might probably be found an inconvenient shackle." Had this proviso been moved, it must have been moved on the 28th of February, 1787, upon a resolution introduced by Hamilton in the assembly on the 26th, and proposed by Schuyler in the senate on that day. No such proviso was moved.

The proviso actually moved was that of Yates, an adherent of Clinton, who proposed to insert a declaration that "the alterations and provisions in the articles of confederation should be *not* repugnant to, or inconsistent with, the constitution of the state," and it was lost by *a single vote*.

Thus Hamilton is represented as sanctioning the accuracy of a speech, which contains a statement of an occurrence that did not take place, when he was a principal actor in, and was familiar with all the particulars of what had occurred at an interval of less than four months.

As the ground of the opposition of his colleagues, and that on which they soon after withdrew from the convention, was, that it was exceeding its powers, it is obvious, if he had made such a statement, that it would have been controverted by them, and shown to have been erroneous by referring to the journals of New-York. As no such statement was made by Hamilton, no contradiction of it is found in the notes of Yates; but his actual representation, and which corresponds with the fact, is there correctly given. "Nor can we," he observed, in reply to Lansing,‡ "suppose an annihilation of our powers by forming a national government, as many of the states have made

‡ Yates' Debates, 130. New-York Journals, 1787, pp. 44, 45, February 28th.

propositions. The "full plan," as stated by Madison, was "so prepared, that it might have gone into immediate effect, if it had been adopted." It consisted of ten articles, each divided into sections.

in their constitutions no provisions for any alterations; and thus much *I* can say for the *state* I have the honour to represent, that *when our credentials* were under consideration in the *senate*, some members were for inserting a restriction on the powers, to prevent an encroachment on the constitution. It was answered by others; and, therefore, the resolve carried on the credentials, that it might abridge some of the constitutional powers of the state, and possibly, in the formation of a new union, it would be found necessary. This appears reasonable, and therefore leaves us at liberty to form such a national government as we think best adapted to the good of the whole."

In the enumeration of the supports of government, Madison, 880, represents Hamilton as stating the second to be "the *love of power*. Men love power. The same remarks are applicable to this principle:—the states have constantly shown a disposition rather to regain the powers delegated by them, than to part with more, or to give effect to what they had parted with! The ambition of their demagogues is known to hate the control of the general government." Could he have embraced "the love of power," producing such consequences as are here enumerated, among "the *supports* of government?"

Yates states the second support thus, "Utility and necessity," which agrees with the brief, each confirming the accuracy of the other. And subsequently, when he represents Hamilton as saying "men always love power," he represents him as adding the observation, "and states will prefer particular concerns to the general welfare." In No. 15 of the Federalist, after speaking of the perpetual effort "of the states, or inferior orbs, to fly off from the common centre," Hamilton observes: "This tendency is not difficult to be accounted for—*it has its origin in the love of power*. Power controlled, or abridged, is almost always the rival and enemy of that power by which it is controlled or abridged." The third support stated by Hamilton, Madison says, was "an habitual attachment by the people." Yates concurs with the brief, in stating it to be "an habitual sense of obligation."*

A more remarkable feature in this report is, that Madison, in order to leave the impression that Hamilton contemplated a monarchy, omits the declaration ascribed to him by Yates. "*I despair that a republican form of government can remove the difficulties. Whatever may be my opinion, I would*

* Yates, 191. If this should be called a verbal difference, it will be recollected that Hamilton is said to have acknowledged "the fidelity of his report, without suggesting more than a very few verbal alterations." Would he not have suggested an alteration of this error?

The *first* of these declared that the "legislative power should be vested in an assembly and senate, subject to a negative; the executive power, with specified qualifications, in a president of the United States; and the supreme judicial authority, with certain exceptions, in a supreme court, to consist of not less than six, nor more than twelve, judges.

The assembly of representatives were (by the *second article*) to be chosen by the free male citizens and inhabitants of the several states in the union, all of whom, of the age of twenty-one years and upwards, were to be entitled to an equal vote. The first assembly was to consist of one hundred members, which were distributed among the states—the most populous state, Virginia, having sixteen, and the least populous, Delaware, having two representatives. The whole number was never to be less than one

hold it, however, unwise to change that form of government."* Thus concurring with the declaration previously more accurately given, in his own language, "that the republican theory ought to be adhered to in this country as long as there was any chance of its success; that the idea of a perfect equality of all political rights among the citizens, exclusive of all permanent and hereditary distinctions, was of a nature to engage the good wishes of every good man, *whatever* might be his *theoretic doubts;* that it merited *his best efforts* to give *success* to it *in practice;* that hitherto, from an *incompetent structure* of the government, it had not had a fair trial; and that the *endeavour* ought *then to be*, to secure to it a *better chance* of success, by a government more capable of energy and order."

No true friend of his fame can regret that *he* entertained, and, entertaining, expressed *these* theoretic doubts; and it is the sublimest aspect of his character, that, in despite of these doubts, he devoted "the best efforts" of his life to give this experiment of "a perfect equality of political rights, success in practice."

* Madison, 893, says in a note: "The explanatory observations, which did not immediately follow, were to have been furnished by Mr. H., who did not find leisure at the time to write them out, and they were not obtained." It is not probable Hamilton, approving his report of the speech, *as he alleges*, would have omitted such important explanatory observations. But if he did so omit them, it was incumbent upon Madison to have given the substance of them. On reading them, the motive to this omission becomes obvious.

hundred, nor more than a given number, which was not fixed, to be apportioned among the states by a decennial census of the whole number of free persons, except Indians not taxed, and three-fifths of all other persons: the term of service was to be determined by the legislature, but was not to exceed three years, and to commence and end the same day. It was to choose its own officers, to judge and decide on the qualifications and elections of its members, and to have the exclusive power of impeachment; but the concurrence of two-thirds was necessary to impeach a senator.

Revenue bills and appropriations for the support of fleets and armies, and for the salaries of the officers of government, were to originate in this body, but might be altered or amended by the senate. The acceptance of office under the United States, vacated a seat in it. Thus, in the constituency of this branch of the government, (all the citizens and inhabitants of the union,) the principle of UNIVERSAL SUFFRAGE was recognised, and the democratic interests were fully represented. Its power over the purse, the sword, and over impeachments, gave it the means to resist usurpation, and rendered it an efficient counterpoise to the more durable members of the government, and the natural guardian of the rights and liberties of the people.

The *third article* related to the second branch of the legislature. The senate were also representatives of the people, but under the modifications that the senators were to be chosen by electors elected in districts of the states for that purpose, and only by persons who had an estate in land for life, or for an unexpired term of not less than fourteen years. The first senate was to be apportioned among the states as the convention should decide. For the purpose of future elections, the states which had more than one senator, were to be divided into convenient districts, to which senators were to be apportioned. A state

having one senator, to be a district. In case of death, resignation, or the removal of a senator from office, his place was to be supplied by a new election in the district from which he came; and upon each election there were not to be less than six nor more than twelve electors chosen in a district. The senate was never to consist of less than forty members, nor was any state to have a less number than that originally allotted to it; but the number might be increased in proportion to the whole number of representatives in the ratio of forty to one hundred; the increase to be apportioned among the states according to the respective numbers of their representatives. The senators were to hold during good behaviour, removable only by conviction on impeachment for some crime or misdemeanor, and might vote by proxy, but no senator present was to hold more than two proxies. To the senate, thus representing the numbers and property of the country, composing a not numerous body, and removed from immediate popular influences and passions, were confided the sole power of declaring war, and a control over the patronage of the government, by requiring its consent to executive appointments, which consent was also necessary to the ratification of treaties.

By the *fourth article*, the president was to be elected by electors chosen by electors chosen by the people in election districts. The first electors of each state were to be equal in number to the whole number of senators and representatives of such state in the national legislature. They were to be chosen by its citizens having an estate of inheritance, or for three lives in land, or a clear personal estate of the value of a thousand Spanish dollars of the then standard. These *first* electors of each state, meeting together, were to vote for a president by ballot, not being one of their own number. Then they were to nominate openly two persons as *second* electors; and out of the nominees having

the four highest numbers, were to choose by ballot, by plurality of votes, two who were to be the second electors of each state. These second electors, neither of whom could be voted for as president, were to meet on an appointed day, and in the presence of the chief-justice, or of a senior judge of the supreme court of the United States, were to open the lists of the persons voted for by the *first* electors. The person having a majority of the whole number, was to be president. If there was not a majority, then the *second* electors were to vote for one of the three persons having the highest number of the votes of the first electors; and the person having a number of votes equal to a majority of the whole number of the second electors chosen, was to be the president. But if no such second choice should be made, then the person having the highest number of votes of the first electors, was to be president. By this complicated process, it was hoped to obtain a corrected expression of the public wishes in the choice of the chief magistrate, who was still the representative of the people.

The president was to take an oath, "faithfully to execute his office, and to the utmost of his judgment and power to protect the rights of the people, and preserve the constitution inviolate." He was to hold his office during good behaviour, removable only by conviction upon impeachment of some crime or misdemeanor. He was to have power to convene and to prorogue the legislature; to have a negative on the acts and resolutions of the assembly and senate; to take care that the laws be faithfully executed; to be commander-in-chief of the army, navy, and militia; and to have the direction of war when commenced, but not to take the actual command in the field without the consent of the senate and assembly; to have the absolute appointment of the chief officers of the four great executive departments, and the nomination, and, with the advice of the

senate, the appointment of all other officers, except such as were differently provided for by the constitution, reserving to the legislatures the power of appointing by name in their laws, persons to execute special trusts, and leaving to ministerial officers the appointment of their deputies. He might fill vacancies temporarily in the recess of the senate, and could pardon all offences except treason, which required the assent of the senate and assembly. He might be impeached by two-thirds of the legislature, two-thirds of each house concurring. If convicted, to be removed from office, and then tried and punished in the ordinary course of law. His impeachment was to operate as a suspension, until determined. His compensation was to be fixed, and not to be increased or diminished during his term of service. If he departed the United States, his office was abdicated.

The president of the senate was to be vice-president; to exercise all the powers of the president in case of his death, resignation, impeachment, removal from office, or absence from the United States, until another was chosen.

The chief-justice, and other judges of the supreme court, were (*by the fifth article*) to hold during good behaviour, removable by impeachment and conviction. They were to have original jurisdiction in all causes in which the United States shall be a party; in all controversies between the United States and a particular state, or between two or more states, except questions of territory; in all cases affecting foreign ministers, consuls, and agents: and an appellate jurisdiction, both as to law and fact, in all cases concerning the citizens of foreign nations; in all questions between the citizens of different states, and in all others in which the fundamental rights of the constitution were involved, subject to specified exceptions, and to the regulations of the legislature. The judges of all courts which might be constituted by the legislature, were also to hold

during good behaviour, removable by impeachment, and were to have competent salaries, to be paid at stated times, and not to be diminished during their continuance in office; but the legislatures might abolish the courts themselves.

All crimes, except on impeachment, were to be tried by a jury of twelve men, in the state where committed; and all civil causes arising under the constitution, before triable by jury in the states, were also to be tried by jury, unless two-thirds of the national legislature should, in special cases, concur in a different provision.

When offices were of such duration as good behaviour, it was felt to be highly important to provide an efficacious and independent tribunal of impeachment; and as not only the rights of the nation, but of the states, were to be guarded, to have reference in its constitution to the general and particular governments.

With this view, a court of impeachment was to be instituted, by which the president, vice-president, the senators, governors, and presidents of the states, the principal officers of the great executive departments, ambassadors and public ministers, judges of the supreme court, generals and admirals of the navy, were to be tried. This court was to consist of the judges of the supreme court, and of the chief justice, or first or senior judge, of the supreme court of law of each state, of whom twelve were to compose a court, and a majority might convict. All other persons, when impeached, were to be tried by a court to consist of the judges of the supreme court and six senators, drawn by lot, a majority of whom might convict. Provisions were made for conducting these impeachments. Such was to have been the permanent structure of this government.

The danger of collisions between the states, arising out of conflicting claims of territory, had been presented to Hamilton, in the progress of the controversy between New-York and Vermont. Other claims were unsettled. He

proposed (*in a sixth article*) that a court should be formed, when territorial controversies should arise, of persons to be nominated by the controverting states, not their own citizens, double the number of the judges of the supreme court, one-half of whom, elected by the senate, should, with the judges of that court, decide the appeal.

In the resolutions prepared by Hamilton in seventeen hundred and eighty-three, it is seen that the leading defect of the confederation proposed to be corrected by him was, its "confining the federal government within too narrow limits; withholding from it that *efficacious authority* and influence in all matters of general concern, which are indispensable to the harmony and welfare of the whole; embarrassing general provisions by unnecessary details and inconvenient exceptions, incompatible with their nature, tending only to create jealousies and disputes respecting the proper bounds of the authority of the United States, and that of the particular states, and a mutual interference of the one with the other."

It was a settled maxim in his mind, "that a *government* ought to *contain within itself* every power requisite to the full accomplishment of the objects committed to its care, and to the complete execution of the trusts for which it is responsible; free from every other control but a regard for the public good, and to the sense of the people."

Another maxim was, "that every power ought to be commensurate with its object; that there ought to be no limitation of a power destined to affect a purpose which is of itself incapable of limitation." Applying these enlarged and obvious principles, and having sought to guard, in the structure of the government, against an abuse of its powers, he declared, in the *seventh article* of this constitution, that "the legislature of the United States shall have power to pass all laws which they shall judge necessary to the common defence and general welfare of the union."

As a check upon this power, every act, bill, or resolu-

tion, was to have the assent of the president, which, if not given within ten days after such act being presented to him, was to become a law, of which the enacting style was to be, that it was "enacted by the people of the United States of America;" thus recognising in every exercise of legislative power the sovereignty and unity of the American people. This general power was followed by the declaration of a few general restrictions in the nature of a bill of rights, either suggested by the experience of this country, or having reference to the nature of the government.

The danger of legislative tyranny, and of retrospective laws, not only to the domestic peace, but to the foreign relations of the country, had been too immediately before him not to have commanded his attention. To provide an efficient check to such pernicious proceedings, he framed a clause declaring "that no bill of attainder or ex post facto law shall be passed;" and adopting the language of the articles of the confederation, and thus adding guards to the republican system, he provided that no title of nobility should be granted by the United States, or either of them, and that no person holding any office or trust under the United States should, without permission of the *legislature*, accept any present, emolument, office, or title, from a foreign prince or state. "The prohibition of titles of nobility," he said, "may truly be denominated the corner-stone of republican government; for, so long as titles of nobility are excluded, there can never be serious danger that the government will be any other than that of the people."

To preclude the recurrence of such an attempt as he had recently defeated in the assembly of New-York, and carrying out the principle which is seen in his system of public instruction, he embodied in the constitution the proviso, so important to the interests of religion, to free-

dom of opinion, and to the peace of society, "nor shall any religious sect, or denomination, of religious test for any office or place, be ever established by law."

In forming a government founded upon a full recognition of the sovereignty of the people, it is seen that he had apportioned the representation to the number of free inhabitants; thus following this great principle to its appropriate result. But in apportioning the direct contributions of the states to the public treasury, there being no common measure of a nation's wealth, he took a basis which, in the peculiar condition of this country, promised a nearer approach to equality than any other. "Taxes on lands, houses, and other real estate, and capitation taxes, were to be proportioned in each state to the whole number of free persons, except Indians not taxed, and three-fifths of all other persons."

As the command over the purse of the nation was intended by him to be a real check upon the action of the government, and with this view the originating revenue bills had been given to the popular branch, he provided "that the two houses might by joint ballot appoint a treasurer of the United States," thus securing the custody of the revenues of the nation to the department it had intrusted with raising and appropriating them.

A government performing its great office of providing for the common defence and safety, and for the general welfare, by its own comprehensive organs, acting upon individuals, the only proper objects of government, would perhaps have possessed a sufficiently central power to have maintained its due ascendency. But as the state governments were to continue in order to prevent collision, it was declared that the laws of the United States, and treaties made under the articles of the confederation, and to be made under the constitution, were to be the supreme law of the land, and to be so construed by the several courts of

the several states. The legislature was to convene once in each year, which, unless otherwise provided for by law, should be on the first Monday in December; to receive a reasonable compensation fixed by law, no succeeding assembly to increase its own compensation.

The preceding injunction, that the laws and treaties of the United States "shall be the supreme law of the land," obligatory on all the courts, guarded against conflicts with the legislation of the states, and in theory secured the necessary supremacy to the judiciary power of the general government; but that power might be rendered nugatory by a defective execution of those laws. The position of New York at that moment indicated the danger to be apprehended from the executive trust of the states being independent of the government of the union.

To provide against both these evils, he declared (*in the eighth article*) that the governor or president of each state shall be appointed by the authority of the United States, shall have a negative on all laws about to be passed in the state of which he shall be governor or president, subject to such regulations as the legislature of the United States shall prescribe, but in all other respects, except as to the appointment of the officers of the militia, to have the same powers the constitution of the states then did or should allow. Each governor or president of a state was to hold his office until a successor was actually appointed, which could not be during the recess of the senate, "unless he died, resigned, or was removed on impeachment."

The officers of the militia might be appointed under the authority of the United States, unless its legislature authorized their appointment by the governors or presidents of the states; and, to avoid any obstruction from that source, the governors and presidents of the states at the time of the ratification of the constitution, were to continue in office in the same manner, and with the same pow

ers, as if they had been appointed by the president and senate of the United States.

"If it be possible," Hamilton observed, "to construct a federal government capable of regulating the common concerns, and preserving the general tranquillity, it must carry its agency to the persons of its citizens. It must stand in need of no intermediate legislations, but must itself be empowered to employ the arm of the ordinary magistrate to execute its own resolutions. The majesty of the national authority must be manifested through the medium of the courts of justice. The government of the union, like that of each state, must be able to address itself immediately to the hopes and fears of individuals, and to attract to its support those passions which have the strongest influence upon the human heart. It must, in short, possess all the means, and have a right to resort to all the methods, of executing the powers with which it is intrusted, that are possessed and exercised by the governments of particular states."

Under this important provision as to the appointments of these governors and presidents, the administration of the general government, pervading the states, would have executed itself, while their legislatures would have retained the control of that part of internal police which relates "to the rights of property and life among individuals, the administration of justice, the supervision of agriculture, and of such things as are proper for local legislation." The advantages would thus have been attained of the reproductiveness of the civil power, and of its diffusive force throughout the whole extent of the republic, and the state legislatures would have acted as sentinels to warn against the first approach of usurpation.

The *ninth* article provided that the president must then be "a citizen of one of the states, or hereafter be born a citizen of the United States;" that senators and represen-

tatives must be citizens and inhabitants of the state in which they were chosen.

Prompted by the recent proceedings in New-York, he also provided that no person eligible as president, or to the legislature, shall be disqualified but by the conviction of some offence for which the law shall have *previously* ordained the punishment of disqualification; but that the legislature might provide by law that persons holding offices under the United States, or either of them, shall not be eligible to the assembly, and "shall be, during their continuance in office, suspended from sitting in the senate." The citizens of each state were to be entitled to all the immunities of citizens of other states, and full faith and credit was to be given to the public acts, records, and judicial proceedings of each; fugitives from justice were to be delivered up;—provisions taken from the articles of confederation. No new state was to be formed without the concurrent consent of the United States, and of the states concerned; but new states might be admitted by the general legislature into the union. The United States were declared bound to guaranty a republican form of government to each state, and to protect it as well against domestic violence as against foreign invasion; a provision drawn from the propositions of Randolph, but essentially enlarged—supplying, as Hamilton observed, "a capital imperfection" in the articles of the confederation.

All treaties, contracts, and engagements under those articles, were to have equal validity under the constitution; no state could enter into a treaty or alliance with another, or with a foreign power, without the consent of the United States. The members of the legislature of the United States and of each state, and all officers, executive and judicial, were to take an oath or affirmation to support the constitution of the United States.

Though a change of government would not have dis-

solved existing treaties not inconsistent with its principles, yet Hamilton's knowledge of the distinctions of international law would teach him the importance of a full and explicit declaration on this important subject, as a guard of the interests and of the faith of the nation. In the absolute prohibition of treaties by the states with foreign powers, the restrictive clause of the confederation was extended, and the requisition of an oath to support the constitution was a useful additional bond. Amendments to it were to be proposed by two-thirds of both houses, to be ratified by the legislatures or conventions in two-thirds of the states.

Finally, to secure the immediate operation of the new system, and to give it the solemn sanction of the people, it was provided (*in the tenth article*) that the constitution should be submitted to conventions of the People of each state, by their deputies, chosen under the direction of their respective legislatures; that each convention ratifying the constitution should appoint the first representatives and senators from such state, the representatives so appointed to continue in office only one year.

When the constitution shall have been duly ratified, congress were to give notice of a day and place of meeting of the senators and representatives from the several states; a majority of whom, when assembled, it was provided, shall, by plurality of voices in joint ballot, elect a president of the United States, "and the constitution, thus organized, shall be carried into effect."

From this abstract it will be seen, though Hamilton would have made use of the state governments for certain purposes, thus completely refuting the allegation that he contemplated their abrogation, yet it was his desire to have established a simple government pervading the whole union and uniting its inhabitants as one people. As it was necessary that "each department should have a will of its

own," this government was so constituted that the members of each had no agency in the appointment of the others, and, with the exception of the judiciary, each was "drawn from the same fountain of authority, the people, and through channels having no communication whatever with one another." "In the constitution of the judiciary in particular," Hamilton remarked, "it might be inexpedient to insist rigorously on the principle; because peculiar qualifications being essential in the members, the primary consideration ought to be to select that mode of choice which best secures these qualifications, and because the permanent tenure by which the appointments are held in that department must soon destroy all sense of dependence on the authority conferring them."

"It is equally evident," he observed, "that the members of each department should be as little dependent as possible on those of the others, for the emoluments annexed to their offices:" hence is seen the provision that the compensation of the executive and the judiciary should be fixed by law; that of the judges not to be diminished during their term, and to guard against executive influence, that of the president to be neither increased nor diminished. "In framing a government which is to be administered by men over men, the great difficulty," he said, "lies in this—you must first enable the government to control the governed, and, in the next place, oblige it to control itself. A dependence on the people is, no doubt, a primary control on the government; but experience has taught mankind the necessity of auxiliary precautions." Of these, the chief was "in the distribution of the supreme powers of the state." "But it is not possible," he observed, "to give to each department an equal power of self-defence. In republican governments, the legislative authority necessarily predominates. The remedy for this inconvenience is, to divide the legislature into different branches; and to ren-

der them by different modes of election, and different principles of action, as little connected with each other as the nature of their common functions and their common dependence on the society will admit." With these views in the structure of this government, while by the frequent choice of the popular branch elected by universal suffrage, the democratic influence was to be constantly renewed and invigorated, in the duration of the senate and executive chosen by constituents with property qualifications, he hoped to secure efficient and enduring checks on the impetuosity and instability of the many. The power of the people was to be kept up by a constitutional augmentation of the number of these representatives; and thus the barrier against executive usurpation, if attempted, was steadily strengthened; and "as the weakness of the executive," he remarked, "may require that it should be fortified," he gave him an "absolute negative on the legislature, as the natural defence with which the executive magistrate should be armed."

Having provided these precautions, by the deposit of the national trusts with representatives of different interests freely chosen by the people, and holding by a responsible and defeasible tenure, governed by the great maxims previously stated, he empowered the legislature "to pass all laws necessary to the common defence and safety, and to the general welfare of the union."

It would require an elaborate commentary to indicate the character and adaptation of the more minute parts of this frame of government to their several purposes, nor will its qualities be more fully discussed. If intrinsic defects are seen, they are defects resulting from the inherent difficulty of imparting the necessary and safe vigour and stability to republican institutions, which exclude the principle of hereditary power.

But in this approach "to the confines of another govern-

ment" without a departure from the republican theory, is seen a remarkable manifestation, both of the fertility of his genius, and of the severe and provident control of his reason and experience. It would not be easy to pronounce on the probable working of such a system, but the subsequent history of the country gives abundant evidence, that a departure from some of its principles has neither added security to liberty nor promoted the general welware.

NOTE.

Two autograph papers exist among the Hamilton MSS.—One, a set of propositions, containing an outline of a plan of government. In the Journal of the Convention, pp. 130, 131, 132, a paper, stated to have been furnished by General Bloomfield, executor to Mr. Brearly, is given. A comparison of this paper with that of Hamilton—Works, ii., 393, 4, 5,—shows its inaccurracy. The difference is in the fourth, seventh, eighth, and ninth propositions, in the last of which the discrepancy is of great moment. This paper not having been proposed, only read, ought not to have been printed with the Journal, as it does not form a part of it. The other is the full plan, of which the preceding abstract is given. Differing statements exist in relation to this matter. In one, Madison states, "that he had taken down the speech made" by Colonel Hamilton "at the time he read his plan of a constitution, which he read as illustrative of his views, not as a project; and that he had sent a copy of this plan and of the speech to Dr. Mason, who had been at Washington, and that he had requested Dr. Eustis to inquire of Dr. Mason whether he had received them; that this was *not the plan* on the Journal, that that contained the same views, but that the plan he referred to was a *full plan*, as long as the present Constitution, and so prepared that it might have gone into immediate effect, if it had been adopted." In a letter to J. Q. Adams, Nov. 2, 1818, when compiling the Journal, a copy of which has been *recently obtained* from the Archives at Washington, Madison states: "Col. Hamilton *did not propose* in the Convention any plan of a Constitution. He had sketched an *outline* which he read as part of a speech, observing that he did not mean it as a *proposition*, but only to give a more correct view of his ideas." In the Life of Gouverneur Morris, i., 284, is a letter of Madison, April 8, 1831, containing this sentence: "He" (Gouverneur Morris) "did not *propose* any outline of a constitution, *as was done by* Hamilton, but contended for certain articles," &c.

An additional motive for Madison's allegation, that Hamilton read and approved his report of his speech, has not been adverted to, thus to give Hamilton's implied sanction to the preparation and preservation by Madison of the debates. Hamilton's language on this subject, that the opinions of members were not to be divulged, is a complete refutation of this allegation.

CHAPTER XLVII.

HAVING thus presented to the Convention the model of an efficient government, founded on the power of the people, Hamilton now exerted all his influence, as he said, "to work the members up to a system of competent energy and stability." The result of these efforts may be seen in the influence which the opinions of Washington, however cautiously expressed, would exert over the members of that body; and in the direction now given to Madison's mind: both of whom, Hamilton subsequently stated, approved his views, "regarding his plan as not exceeding in stability and strength what the exigencies of the country required." "They were," in his own words, "completely up to the scheme."*

On the day after his speech was delivered, Madison addressed the committee.† He stated that the confederation might be dissolved by the infraction of any article of it, recapitulating the instances in which it had been violated. The Jersey plan did not provide for the ratification of the states. Its judiciary was to have only an appellate jurisdiction, without providing for a second trial. We must radically depart from the *federal* plan, or share the fate of all confederacies. The Jersey plan gave no checks on the excesses of the states. It did not secure the internal tranquillity, nor prevent foreign influence.

* NOTE.

† The residue of the debates is taken, with very few exceptions, from Yates, the general accuracy of which is confirmed by other authorities.

How is military coercion to enforce government? Unless we agree upon a plan, what will be the situation of the smaller states? If they form partial confederacies, must they not make larger concessions to the greater states? The large states cannot assent to an equal representation. If the states were equalized, state distinctions would still exist.

In reply to an observation of Wilson, Hamilton remarked that he did not intend yesterday a total extinguishment of state governments, but that a national government ought to be able to support itself without the aid or interference of the state governments, and therefore should have full sovereignty. Even with corporate rights the states will be dangerous to the national government, and ought to be new modified, or reduced to a smaller scale. In the course of a series of forcible and eloquent remarks, King observed that none of the states were at that time sovereign or independent; many of their essential rights were vested in congress. By the confederation, it possesses the rights of the United States. *This is the union of the men of these states.* None individually or collectively, except in congress, have the rights of peace, or war, or treaty. The magistracy in congress possesses the sovereignty. As to certain points, we are now an united people; consolidation is already established; the states are confederates, the constituents of a common sovereign, constituted with powers partly federal and partly national. The alterations which had been made, show others can be made, except the subversion of the states, which are expressly guarantied. The articles of the confederation providing in themselves for an alteration, might be so altered as to give them a national character. "The declaration of independence," Wilson said, "preceded the state constitutions. What does this declare? In the name of the people of these states, we are declared to be free and independent. The powers of

war, peace, alliances, and trade, are declared to be vested in congress."

"I assent to this remark," Hamilton observed; "establish a weak government, and you must, at times, overleap its bounds. Rome was obliged to create dictators. Cannot propositions be made to the people because we before confederated on other principles? The people can grant the powers if they will! The great objects of industry can only be protected by a general government." On motion of King, it was resolved by seven states that the Jersey plan was inadmissible.

Having thus obtained a decided expression of the opinion of the convention against the continuance of a mere league with enlarged powers, they proceeded, on the twentieth of June, again to consider the Virginia resolutions. After an amendment of the first, so as to declare that "the government of the United States ought to consist of a supreme legislative, judiciary, and executive," Lansing moved a declaration "that the powers of legislation be vested in the United States in congress."* He stated that if the Jersey plan was not adopted, it would produce the mischiefs they were convened to obviate. That the "principles of that system" were "an equality of representation, and dependence of the members of congress on the states. That as long as state distinctions exist, state prejudices would operate, whether the election be, by the states or the people." If there was no interest to oppress, there was no need of an apportionment. What would be the effect of the other plan? Virginia would have sixteen, Delaware one representative. Will the general government have leisure to examine the state laws? Will it have the necessary information? Will the states agree to surrender? Let us meet public opinion, and hope the progress of senti

* Hamilton's MSS. notes, v. i. p. 77.

ment will make future arrangements. "He would like the system" of his colleague (Hamilton) "if it could be established,"* but it was "a system without example."

Mason wished to preserve the state governments, and to draw lines of demarcation, trusting to posterity to amend. He was in favour of a republican system with a legislature of two branches.

Martin urged the grant of new powers, and such a modification of the existing system as would not endanger the state governments. "The grant," he said, "is a state grant, and the union must be so organized that the states are interested in supporting it." After further debate, the proposition to vest the powers of legislation in congress was rejected, and the national plan was taken up. On the question of constituting two branches of the legislature, Johnson observed "that the Jersey plan would preserve the state governments, and thus was a departure from that of Virginia, which, though it concentres in a distinct national government, is not wholly independent of those of the states.

"A gentleman from New-York, with boldness and decision, proposed a system totally different from both, and, though he has been praised by every body, has been supported by none. He could have wished that the supporters of the Jersey system could have been satisfied with that of Virginia, and the individuality of the states be supported. It is agreed on all hands that a portion of government is to be left to the states; how can this be done? By joining the states in their legislative capacities, with the right of apportioning the second branch of the national legislature to represent the states individually." Wilson would try to designate the powers of each. Madison apprehended the greatest danger from the encroachments of

* In the original notes, "He would like my system if it could be established—system without example."

the states; an apprehension justified by experience. The negative on the state laws afforded one security to the national government. To draw the line between the two was a difficult task. He believed it could not be done, and was inclined to a general government. A national legislature of two branches was approved.

On the question of the election of the first branch by the people, great diversity of opinion existed. Hamilton again declared himself in favour of it. He observed,* "It is essential to the democratic rights of the community, that this branch be directly elected by the people. Let us look to probable events. There may arrive a period when the state legislatures may cease. Such an event ought not to embarrass the national government."

King concurred in support of this principle. He believed that the magistrates of the states will ever pursue schemes of their own; and this state policy will, if the states elect the first branch, pervade the national government, to which those of the states will ever be hostile. After an opposite view by Pinckney and Rutledge, the resolve, giving the election to the people, was carried, and the duration of this branch considered. It was proposed to limit it to two years. Sherman was for one. Hamilton said,† "There is a medium; I confess three years is not too long a term: a representative ought to have freedom of deliberation, and ought to exercise an opinion of his own. I am convinced the public mind will adopt a solid plan; although the government of New-York is higher toned than that of any other state, yet the electors are listless and indifferent. The public are not now ready to receive the best plan of government, but the progress of circumstances will give it a different complexion." A biennial term was then adopted.

* Yates, page 149, *omitted* in Madison's reports, 926.

† Yates, 151. See Madison, 931.

On the inquiry as to the compensation of the members, Hamilton remarked that "the states ought not to pay the members, nor ought the amount to be fixed by the constitution. He who pays is master. If each state pays its own members, the burden being according to their respective distances from the seat of government, would be disproportionate. It has been asserted that the interests of the general and state legislatures are precisely the same. This cannot be correct. The views of the governed are often materially different from those who govern. *The science of policy is the knowledge of human nature.* A state government will ever be the rival power of the general government. It is, therefore, highly improper that the state legislatures should be the paymasters of the national government. All political bodies love power, and it will often be improperly attained."* It was resolved that the members should be paid from the public treasury.

To secure the representatives from influence, it had been proposed to render them ineligible to any office established by a particular state, or by the United States, during their term of service. It was now proposed to expunge the clause which extended the restriction to one year after the expiration of that term. King considered it impossible to carry the system of exclusion so far, "and we refine," he said, "too much by going in this instance to Utopian lengths. It is a mere cobweb."—"If there was no exclusive clause, Madison thought there might be danger of creating offices, or augmenting the stipends of those already created, in order to gratify members if they were not excluded. Such an instance had fallen within his own observation. He was of the opinion that no office ought to be open to a member, which might be created or the emolument aug-

* Yates, 152-3.

mented while he was in the legislature." Hamilton closed the debate* with these remarks:—

"In all general questions which become the subjects of discussion, there are always some truths mixed with falsehoods. I confess there is danger where men are capable of holding two offices. Mankind in general are vicious—their passions may be operated upon: we have been taught to reprobate the danger of influence in the British government, without duly reflecting how far it is necessary to support a good government. We have taken up many ideas upon trust, and at last, pleased with our own opinions, establish them as undoubted truths. Hume's† opinion of the British constitution confirms the remark, that there is always a body of firm patriots, who often shake a corrupt administration. Take mankind as they are, and what are they governed by? Their passions.

"There may be in every government a few choice spirits, who may act from more worthy motives. One great error is, that we suppose mankind more honest than they are. Our prevailing passions are ambition and interest; and it ever will be the duty of a wise government to avail itself of those passions, in order to make them subservient to the public good, for these ever induce us to action.

"Perhaps a few men in a state may, from patriotic motives, or to display their talents, or to reap the public applause, step forward. But if we adopt this clause, we destroy the motive. I am, therefore, against all exclusions and refinements, except this exclusion—that when a member takes his seat, he should vacate every other office. It

* Yates, 156.

† "It was known that one of the ablest politicians (Mr. Hume) had pronounced all that influence on the side of the crown which went under the name of *corruption*, an essential part of the weight which maintained the equilibrium of the constitution."

Madison, 938, gives this version of Hamilton's remarks thus italicised.

is difficult to put any exclusive regulation into effect; we must in some degree submit to the inconvenience."

The second branch, or senate, was next considered. Hamilton, in accordance with his plan, wished that it should be chosen by the *people*, through the medium of electors; but it was decided that the choice should be made by the state legislatures. Its term of service was much debated. Madison said, "We are now to determine whether the republican form shall be the basis of our government." He admitted that great powers were to be given, and that they might be abused. Members may also lose their attachment to their states. Yet the first branch would control them in many of their abuses. "But we are now forming a body on whose wisdom we mean to rely, and their permanency in office secures a proper field in which they may exert their firmness and knowledge. Democratic communities may be unsteady, and be led to action by the impulse of the moment. They may be sensible of their own weakness, and desire the counsels and checks of friends to guard them against the turbulence and weakness of unruly passions. Such are the various pursuits of this life, that, in all civilized countries, the interest of a community will be divided; there will be debtors and creditors, and an unequal possession of property; and hence arise different views and different objects in government. This, indeed, is the ground-work of aristocracy, and we find it blended in every government, both ancient and modern. Even where titles have survived property, we discover the noble beggar haughty and assuming. The man who is possessed of wealth, who lolls on his sofa or rolls in his carriage, cannot judge of the wants or feelings of the day-labourer.

"The government we mean to erect is intended to last for ages. The landed interest at present is prevalent; will it not in time, by the operation of *trade* and *manufactures*, be *overbalanced* in future elections? and, unless wisely pro-

vided against, what will become of your government? In England, at this day, if elections were open to all classes of people, the property of the landed proprietors would be insecure; an agrarian law would soon take place. If these observations be just, our government ought to secure the permanent interests of the country against innovation. Landholders ought to have a share in the government to support these valuable interests, and to balance and check the other. *They ought to be so constituted as to protect the minority of the opulent against the majority.* The senate, therefore, ought to be this body; and, to answer these purposes, ought to have *permanency and stability.* Various have been the propositions; but my opinion is, *the longer they continue in office,* the better will their view be answered."*

Sherman replied, "that a bad government was the worse for being long; that frequent elections give security and permanency. That in Connecticut an annual government had existed one hundred and thirty-two years, and as long as a man behaves well he is never turned out of office. Four years to the senate is quite sufficient with the rotation proposed."

Hamilton observed, "This question has already been considered in several points of view. We are now forming a republican government. *Real liberty is neither found in despotism, nor in the extremes of democracy, but in moderate governments.* Those who mean to form a solid republican government, ought to proceed to the confines of another government.† As long as offices are open to all

* Yates, 169.

† It will be remarked that a similar opinion was expressed by Jefferson a few months before. Writing from Paris, February 28, 1787, to La Fayette, then about to take part in the deliberations of France, he observed, "I wish you success in your meeting, (the assemblée des notables.) I should form better hopes of it, if it were divided into two houses instead of seven; *keep*

men, and no constitutional rank is established, it is pure republicanism. But if we *incline too much to democracy, we shall soon shoot into a monarchy.* The difference of property is already great among us. Commerce and industry will still increase the disparity. Your government must meet this state of things, or combinations will in process of time undermine your system. What was the tribunitial power of Rome? It was instituted by the plebeians as a guard against the patricians. But was this a sufficient check? No! The only distinction which remained at Rome was, at last, between the rich and poor. The gentleman from Connecticut forgets that the democratic body is already secure in a representation. As to Connecticut, what were the little objects of their government before the revolution? Colonial concerns merely. They ought now to act on a more extended scale; and dare they do this? Dare they collect the taxes and requisitions of congress? Such a government may do well if they do not tax, and this is precisely their situation."

Wilson remarked, "The motion is now for nine years, and a triennial rotation. Every nation attends to its foreign intercourse to support its commerce, to prevent foreign contempt, and to make war and peace. Our senate will be possessed of these powers, and therefore ought to be dignified and permanent. What is the reason that Great Britain does not enter into a commercial treaty with us? Because congress has not the powers to enforce its observance. But give them those powers, and give them the stability proposed by the motion, and they will have more

ing the good model of your neighbouring country before your eyes, you may get on step by step towards a good constitution. Though that model is not perfect, yet, as it would unite more suffrages than any new one which could be proposed, it is better to make that the object. If every advance is to be purchased by filling the royal coffers with gold, it will be gold well employed" —2 Jeff. Works, p. 101.

permanency than a monarchical government. The great objection of many is, that this duration would give birth to views inconsistent with the interests of the union. This can have no weight if the triennial rotation is adopted, and this plan may possibly tend to conciliate the minds of the members of the convention on this subject, which have varied more than on any other question." Delaware, Pennsylvania, and Virginia, were in favour of nine years, but it was agreed that it should be six, with a biennial rotation.

The discussion of the powers of the legislature was deferred in order to consider the proportionate suffrage of the states in its choice. Martin urged with great vehemence an equal representation of the states as their right, and as most promotive of the general welfare; and after a motion of Lansing, that the representation in the first branch should be according to the rule of the confederation, Madison supported earnestly a proportionate representation of the states. "Some gentlemen," he said,* "are afraid that the plan is not sufficiently national, while others apprehend that it is too much so. If this point of representation was once well fixed, we would come nearer to one another in sentiment. The necessity would then be discovered of circumscribing more effectually the state governments, and enlarging the bounds of the general government. Some contend that the states are sovereign, when in fact they are only political societies. There is a gradation of power in all societies, from the lowest corporation to the highest sovereign. The states never possessed the essential rights of sovereignty. These were always vested in congress. Their voting as states in congress is no evidence of sovereignty. The state of Maryland voted by counties. Did this make the counties sovereign? The

* Yates, p. 184–5.

states at present are only great corporations, having the power of making by-laws, and these are effectual only if they are not contradictory to the general confederation. The states ought to be placed under the control of the general government, at least as much so as they formerly were under the king and British parliament. The arguments, I observe, have taken a different turn, and I hope may tend to convince all of the necessity of a strong energetic government; which would equally tend to give energy to, and protect the state governments." He deprecated the jealousy of the states, and observed, "If the power is not immediately derived from the people, in proportion to their numbers, we make a paper confederacy, but that will be all!"

"I would have no objection," Judge Read observed, "if the government was more national, but the proposed plan is so great a mixture of both, that it is best to drop it altogether. A state government is incompatible with a general government. If it was more national, I would be for a representation proportionate to population. The plan of the gentleman from New-York (Hamilton) is certainly the best. But the great evil is the unjust appropriation of the public lands. If there was but one national government, we would be all equally interested."

Hamilton, in the progress of this discussion, remarked—"The course of my experience in human affairs might, perhaps, restrain me from saying much on this subject. I shall, however, give utterance to some of the observations I have made during the course of this debate. The gentleman from Maryland has been at great pains to establish positions which are not denied. Many of them, as drawn from the best writers on government, are become self-evident principles. But I doubt the propriety of his application of those principles in the present discussion. He deduces from them the necessity that states entering into a confederacy must retain the equality of votes. This po-

sition cannot be correct. Facts contradict it. The parliament of Great Britain asserted a supremacy over the whole empire, and the celebrated Judge Blackstone labours for the legality of it, although many parts were not represented. This parliamentary power we opposed as contrary to our colonial rights. With that exception, throughout that whole empire it is submitted to.

"May not the smaller and greater states so modify their respective rights as to establish the general interest of the whole without adhering to the right of equality? Strict representation is not observed in any of the state governments. The senate of New-York are chosen by persons of certain qualifications to the exclusion of others.

"The question after all is—Is it our interest, in modifying this general government, to sacrifice individual rights to the preservation of the rights of an *artificial* being, called states? There can be no truer principle than this—*That every individual of the community at large has an equal right to the protection of government.* If, therefore, three states contain a majority of the inhabitants of America, ought they to be governed by a minority? Would the inhabitants of the great states ever submit to this? If the smaller states maintain this principle through a love of power, will not the larger, from the same motives, be equally tenacious to preserve their power? They are to surrender their rights —for what? For the preservation of an artificial being. We propose a free government. Can it be so, if partial distinctions are maintained?

"I agree with the gentleman from Delaware, that if the state governments are to act in the general government, it affords the strongest reason for exclusion. In the state of New-York five counties form a majority of representatives, and yet the government is in no danger, because the laws have a general operation. The small states exaggerate their danger, and on this ground contend for an undue

proportion of power. But their danger is increased if the larger states will not submit to it. Where will they form new alliances for their support? Will they do this with foreign powers? Foreigners are jealous of our increasing greatness, and would rejoice in our distractions. Those who have had opportunities of conversing with foreigners respecting sovereigns in Europe, have discovered in them an anxiety for the preservation of our democratic governments, probably for no other reason but to keep us weak. Unless your government is respectable, foreigners will invade your rights—and to maintain tranquillity, it must be respectable. Even to observe neutrality you must have a strong government.

"I confess our present situation is critical. We have just finished a war which has established our independence, and loaded us with a heavy debt. We have still every motive to unite for our common defence. Our people are disposed to have a good government, but this disposition may not always prevail. It is difficult to amend confederations: it has been attempted in vain, and it is perhaps a miracle that we are now met. We must therefore improve the opportunity, and render the present system as perfect as possible. Their good sense, and, above all, the necessity of their affairs, will induce the people to adopt it."

Lansing's motion was negatived by six to four states, Maryland being divided, and the original resolution passed.

Imperfect as these reports are, they are sufficient to show the spirit in which Hamilton met the objections to an energetic system, labouring to vindicate the cause of an efficient moderate government.

Some private business calling him at this time to New-York, he was absent from the convention a few days.

From the influence of Washington he hoped much; and soon after his departure he communicated to him his impression of what he believed to be the opinion of the peo

ple, and his convictions as to the policy to be pursued. His letter gives the important and interesting fact, that, previous to this moment, no disclosure of his sentiments had been sought by Hamilton from Washington. Such was the delicacy observed towards a personage to whom the country looked as its probable head, if a general government should be established.

HAMILTON TO WASHINGTON.

DEAR SIR,

In my passage through the Jerseys, and since my arrival here, I have taken particular pains to discover the public sentiment, and I am more and more convinced that this is the critical opportunity for establishing the prosperity of this country on a solid foundation. I have conversed with men of information, not only of this city, but from different parts of the state; and they agree that there has been an astonishing revolution for the better in the minds of the people.

The prevailing apprehension among thinking men is, that the convention, from the fear of shocking the popular opinion, will not go far enough. They seem to be convinced, that a strong, well-mounted government will better suit the popular palate, than one of a different complexion. Men in office are, indeed, taking all possible pains to give an unfavourable impression of the convention; but the current seems to be moving strongly the other way.

A plain but sensible man, in a conversation I had with him yesterday, expressed himself nearly in this manner:— The people begin to be convinced that their "excellent form of government," as they have been used to call it, will not answer their purpose, and that they must substitute something not very remote from that which they have lately quitted.

These appearances, though they will not warrant a conclusion that the people are yet ripe for such a plan as I advocate, yet serve to prove that there is no reason to despair of their adopting one equally energetic, if the convention should think proper to propose it. They serve to prove that we ought not to allow too much weight to objections, drawn from the supposed repugnancy of the people to an efficient constitution. I confess I am more and more inclined to believe that former habits of thinking are regaining their influence with more rapidity than is generally imagined.

Not having compared ideas with you, sir, I cannot judge *how far our sentiments agree;* but, as I persuade myself, the genuineness of my representations will receive credit with you. My anxiety for the event of the deliberations of the convention, induces me to make this communication of what appears to be the tendency of the public mind.

I own to you, sir, that I am seriously and deeply distressed at the aspect of the counsels which prevailed when I left Philadelphia. I fear that we shall let slip the golden opportunity of rescuing the American empire from disunion, anarchy, and misery.

No motley or feeble measure can answer the end, or will finally receive the public support. Decision is true wisdom, and will be not less reputable to the convention, than salutary to the community.

I shall of necessity remain here ten or twelve days. If I have reason to believe that my attendance at Philadelphia will not be mere waste of time, I shall, after that period, rejoin the convention.

New-York, July 3d, 1787.

The apprehensions entertained by Hamilton were confirmed by the temper evinced during the renewed discussion of a proposition of Ellsworth that each state should

have an equal vote in the second branch of the legislature. At its termination the increased strength of the states right party was shown by an equal division of the votes—five states being in favour of the proposition and five in the negative—Maryland divided.

The pertinacity with which the claims to an equal participation in the second branch were pressed, following the warmth previously exhibited on the question of electing the first branch by the people, threatened an utter prostration of all hope of concurring in a plan of government.

Under these circumstances, General Cotesworth Pinckney proposed to appoint a committee to adjust the embarrassing controversy.

Martin objected to the measure as an attempt to compromise, and, feeling the strength of his party, declared "You must give each state an equal suffrage, or our business is at an end." Sherman replied, that "we had reached a point from which we cannot move in either direction," and urged the committee.

Gouverneur Morris followed, insisting on the necessity of an aristocracy "of men of great and established property" in the second branch, to be checked by the democratic branch, and thus give stability to the government. "A senate for seven years, excluded from office, would be," he observed, "one of the baubles of the general government. A government by compact is no government. While I avow myself," he said, "the advocate of a strong government, I admit that the influence of the rich must be guarded: and a pure democracy is equally oppressive to the lower orders of the community." He threw out these remarks for the consideration of the committee to be appointed. Wilson did not approve of this expedient. If adopted, he was for a smaller committee. Madison objected to it as only a source of delay. If appointed "from each state, we shall have in it the whole force of state pre-

judices." "The great difficulty is to conquer former opinions. The motion can as well be decided here as in committee." Gerry urged accommodation as absolutely necessary, hoping that the defects might be amended by a future convention. The motion was carried by nine states, Jersey and Delaware dissenting, and a committee of a member from each state was chosen by ballot, composed chiefly of the advocates of the Jersey plan.

On the fifth of July a compromise was reported. It proposed to give to each state one representative for every forty thousand inhabitants, computing three-fifths of the slaves as one white, and to a state containing a less number, one representative, to compose the first branch; vesting in that branch the exclusive origin and control of money bills;—that in the second branch, each state should have one vote.

The advocates of a strong government opposed the proposition. Wilson insisted upon a division of the question. Madison declared that the originating money bills was no concession on the part of the smaller states, as seven states combining in the second branch, could control the first; it being small in number and well connected, will ever prevail. No provision is made as to the regulation of trade, imposts, treaties. We are driven to an unhappy dilemma Two-thirds of the inhabitants of the union are to please the remaining third by sacrificing their essential rights.

In behalf of this compromise it was asserted, that the power over money bills was an equivalent for the equal representation in the senate. That it properly belonged to the democratic branch. The senate being farther removed from the people, would be less attentive to economy. It was analogous to the parliamentary usage of England.*

The members most strenuous for retaining power in the

* Gerry's State of Facts.

states wished to postpone the consideration of the first proposition in order to enter upon the second, which was not acceded to; and the question, whether numbers or relative contribution should determine the proportion of suffrage, was referred to a special committee. It was then proposed to consider the constitution of the second branch. This was postponed by the vote of six states—Massachusetts and New-York divided.

Having given a vote in favour of conferring on the first branch the originating money bills, and thus fulfilling that part of the proposed compromise, it was moved that in the second branch the states should have an equal vote, which was approved. On the ninth of July the special committee reported an apportionment of the members of the first branch among the states, and that the legislature be authorized to augment the number from time to time, and in case a state be divided, or two or more united, or a new state be created within the limits of the United States, it be empowered to regulate the number of representatives upon the principles of their wealth and number of inhabitants. The provisional clause was approved, the equal vote in the second branch temporarily sanctioned, and the ratio was established on a conjectural basis. An objection being taken to the small number of representatives, this subject was referred to the grand committee from each state.* The following day King reported a new scale of representation, increased from fifty-six to sixty-five members.

At this important moment, when a large concession had been made to the advocates of an equal power in the states, and a basis had been formed upon which a compound

* Madison states a proposition, proceeding from himself, as a proper ground of compromise; that in the first branch the states should be represented according to the number of free inhabitants, and in the second, which had for one of its primary objects the guardianship of property, according to the whole number, including slaves—in effect, a southern predominance.

government, in part national, and in part federal, was to be established, Yates and Lansing retired finally from the convention.* On the last day on which they appeared, Washington replied to Hamilton.

WASHINGTON TO HAMILTON.

Philadelphia, 10th July, 1787.

"DEAR SIR.

I thank you for your communication of the third. When I refer you to the state of the counsels which prevailed at the period you left this city, and add that they are now, if possible, in a worse train than ever, you will find but little ground on which the hope of a good establishment can be formed. In a word, I *almost* despair of seeing a favourable issue to the proceedings of the convention, and do therefore repent having had any agency in the business.

The men who oppose a strong and energetic government, are, in my opinion, narrow-minded politicians, or are under the influence of local views.

The apprehension expressed by them, that the people will not accede to the *form proposed*, is the *ostensible*, not the *real* cause of opposition; but admitting that the *present* sentiment is as they prognosticate, the question ought nevertheless to be, *is it or is it not the best form?* If the former, recommend it, and it will assuredly obtain maugre opposition.

I am sorry you went away—I wish you were back. The crisis is equally important and alarming, and no opposition, under such circumstances, should discourage exertions, till the structure is fixed. I will not, at this time, trouble you with more than my best wishes and sincere regards."

* July 10.

An interesting statement exists in respect to Washington's opinions, in conformity with this letter. Hamilton related confidentially, that having given his views in his elaborate speech, he was "endeavoring afterwards, in constant conversation with the members, to work them up to a system of competent energy and stability. General Washington and Madison entirely concurred in his views, regarding the plan which he submitted to the Convention, as not exceeding in stability and strength what the exigencies of the country required. THEY WERE COMPLETELY UP TO THE SCHEME. No one of the three supposed it could possibly carry. It was thought, however, advisable to sketch a plan of sufficient stability, and in defending it, to bring forward those sound principles which would endure the test of enlightened investigation and of time. The minds of the members of the Convention were, in consequence, raised to a point, which otherwise they would not have reached." He added, that "his opinion relative to a President during good behavior underwent a change from reflection on the more serious struggle likely to be produced by the choice of so permanent an officer."*

* Thomas Y. Howe was his military secretary in 1799 and 1800, when this conversation took place. Letter of Howe to the author, March 31, 1840. Detroit.

CHAPTER XLVIII.

The withdrawal from the Convention of the two delegates from New York, at such a juncture, leaves no room for a doubt, that their object was to arrest totally its proceedings.

That they acted in accordance with Clinton, was proved by his deportment at this time. Unreserved declarations were made by him, that no good was to be expected from the appointment or deliberations of this body. That the most probable result was, that the country would be thrown into confusion by the measure. That it was by no means a necessary one, as the confederation had not undergone a sufficient trial, and probably, on a more full experiment, would be found to answer all the purposes of the union.

"Clinton," Hamilton remarked, "was not a man governed in ordinary cases by sudden impulse; though of an irritable temper, when not under the immediate influence of irritation, he was circumspect and guarded, and seldom acted or spoke without premeditation or design."

Such declarations from such a source, could only have been intended to excite prejudices against whatever plan should be proposed by the convention. Feeling that Clinton's conduct might, and fearing that it would, induce the mischief he so confidently and openly predicted, Hamilton resolved to exhibit it before the public in all its deformity. He immediately published a pointed animadversion, charging these declarations upon him, and avowing a readiness to substantiate them.

Having thus interposed his personal influence to counteract this insidious policy by an appeal to the people, he hastened to Philadelphia, and there, without a vote, standing alone, and unsupported by his state, he renewed his exertions to compose the heats and heal the differences which had arisen, and, as far as was in his power, to aid in directing the course of the convention.

The discussion of the compromise was protracted until late in July, when the first of the propositions having been modified, both were adopted, though by a vote indicating a wide difference of opinion. Five states were in favour of them, but they were those of secondary importance. Pennsylvania, Virginia, South Carolina, and Georgia, voted against them; and the important commonwealth of Massachusetts was divided. During this debate the number of representatives was apportioned to each state, in the first congress. It was declared that the representation ought to be proportioned to direct taxation, and to ascertain the necessary alterations in it, that a periodical census should be taken. South Carolina and Georgia, seeking to increase their relative weight, would have embraced in this census all their slaves; but the three-fifths compromise, although at first rejected,* was finally adopted. An effort was also made to establish the principle, that the representation of the new states to be admitted into the union, should never exceed that of the original thirteen; but this unequal proposition was defeated.†

In determining the period when a census should be taken, a similar contest for power was also seen. The vote was at first unanimous for a re-apportionment at the expiration of fifteen years. Then two years were proposed; then six; then twenty; a decennial census was ultimately established.

* Connecticut, Virginia, North Carolina, and Georgia, voting for it.

† Affirmative, Massachusetts, Connecticut, Delaware, and Maryland

The principles of the constitution of the first branch being settled, those of the second were considered. A proposal was made to fix the number of senators at thirty-six, and to apportion them among the states. Massachusetts and Virginia urged this change warmly, but it was resolved that each state should have an equal vote. The compromise on this point being effected, a new contest for power was seen in the several modifications suggested in the structure of the other departments of the government, and in the extent and distribution of its powers.

The legislative powers of the government were now considered, and a general declaratory clause was passed, having in view subsequent alterations. It was not to be expected that the proposed negative of Madison on the state laws, would be retained; it was only supported by the votes of three states, and in lieu of it, the legislative acts of the United States, and treaties made under its authority, were declared to be the supreme law of the land.

The institution of the executive department was the next subject of deliberation. This marked instance was now seen of the influences which were operating: Randolph had insisted earnestly on a plural executive; he suggested, as giving a reasonable security to the smaller states, the appointment of one executive, to be elected by an equality of state votes. The delegates from Virginia, who had hesitated, yielding, it was unanimously declared that the national executive was to consist of one person. The effort was renewed to render him eligible by the electors of the people. It was then proposed that he should be chosen by electors appointed by the legislatures of the states; but the choice was given to the national legislature, in conformity with the original proposition of Virginia. He was declared to be re-eligible. The trusts of carrying into execution the national laws, and of appointing the national officers, subject to the negative of two-thirds of the legislature, were con-

fided to him; and a motion was made to substitute for a term of seven years, the provision that he should hold his office during good behaviour. This important substitute was supported by the votes of four states, New Jersey, Pennsylvania, Delaware, and Virginia; but the term of seven years was retained.

A judiciary during good behaviour was next established; and, after an effort to confide the appointment of the judges to the executive department solely, and then, as Hamilton had proposed in his plan, to require the consent of the senate, the appointment was given to the senate; another concession to state influence. Its jurisdiction was declared to extend to cases arising under laws passed by the general legislature, and to such other questions as involve the national peace and harmony.

The discussion was continued until the twenty-sixth of July, much time being devoted to the institution of the executive, and to the consideration of a proposal to require certain qualifications of landed property and citizenship in the members of each department of the government.

The modified resolutions were then referred to a committee of detail to prepare and report the outline of a constitution on the sixth of August, to which time the convention adjourned. A draft of a constitution was on that day reported, founded upon the principles which had been previously adopted, with many supplementary provisions.

The compromise, thus far, had only extended to the structure of the government; its influence was now chiefly seen in the limitations of its powers—limitations which may be, with much probability, ascribed to Randolph and Ellsworth, who, with Rutledge, Gorham, and Wilson, composed the committee of detail.

This supposition is founded on a fact, which, it is believed, has not heretofore attracted attention.

On the twenty-second of August, seventeen hundred

and eighty-one, Randolph, Ellsworth, and Varnum, who had been appointed a committee to *prepare* an *exposition* of the *confederation*, made a report. They stated that they ought to be discharged, because "the omission to enumerate any of the powers of congress would become an argument against their existence, and that it will be early enough to insist on them when they shall be exercised and disputed."

Having specified in what particulars "the confederation requires execution," they proceeded to enumerate the cases in which they deemed the extension of the powers of congress necessary.

This exposition of the existing powers of the confederation, and this enumeration of the proposed supplemental powers, may be regarded as the source from which the detail of the legislative powers enumerated in this plan of a constitution is derived. One marked difference is observed.

By the report, the concurrence of two-thirds of congress was required in the exercise of the great powers of war, treaty, and revenue, while in this draft of the constitution such concurrence is only made necessary to the passage of a navigation act—a vicious check upon legislation, certain to result in evasive refinements. The convention having refused to go into committee, this plan of a constitution was discussed in the house. In its general outline may be seen the extent to which Hamilton's system was followed, and in the similarity of some of the modifications which were proposed, the part he took as the discussion progressed.

He continued in the convention until after the thirteenth of August, when it is seen by the journal, that instead of the provision requiring as a qualification for a seat in the house of representatives that the candidate should have been a citizen seven years, he urged that citizenship and inhabitancy were sufficient pre-requisites, leaving to the discre-

tion of the legislature to prescribe such rules of naturalization as should be found expedient. He was soon after compelled again to repair to New-York.

The following letters evince his determination to give his sanction to its proceedings, under a conviction that whatever plan should be adopted, would be an improvement upon the articles of the confederation, and that a dissolution of that body without the recommendation of a substitute, would produce a dissolution of the union.

HAMILTON TO RUFUS KING.

DEAR SIR,

Since my arrival here, I have written to my colleagues, informing them if either of them would come down, I would accompany him to Philadelphia: so much for the sake of propriety and public opinion.

In the mean time, if any material alteration should happen to be made in the plan now before the convention, I will be obliged to you for a communication of it. I will also be obliged to you to let me know when your *conclusion* is at hand, for I would choose to be present at that time.

New-York, August 20, 1787.

THE SAME TO THE SAME.

DEAR SIR,

I wrote you some days since, to request you to inform me when there was a prospect of your finishing, as I intended to be with you, for certain reasons, before the conclusion.

It is whispered here, that some late changes in your scheme have taken place, which give it a higher tone. Is this the case? I leave town to-day to attend a circuit in

a neighbouring county, from which I shall return the last of the week, and shall be glad to find a line from you, explanatory of the period of the probable termination of your business.

New-York, August 28, 1787.

His anxiety for the establishment of an energetic national government was increased by a circumstance which indicates the unsettled state of the public feeling, the distrusts of the community, and the mad projects which the deranged affairs of the country had engendered.

During his sojourn at New-York, a report was mentioned in a gazette* of that city, that a project was in embryo for the establishment of a monarchy, at the head of which it was contemplated to place the bishop of Osnaburgh.

This report was traced to a political letter, which had been circulated in Connecticut, suggesting this plot.

The extraordinary nature of this suggestion, whether intended to excite prejudices against the convention, or to alarm the anti-federalists to an adoption of such a constitution as it should propose, or as an experiment upon public opinion, engaged the attention of Hamilton. He immediately addressed a letter to Colonel Wadsworth, asking a solution of this enigma, in which he observes, "The history of its appearance among us, is, that it was sent by one Whetmore, of Strafford, formerly in the paymaster-general's office, to a person in this city.

"I am at a loss clearly to understand its object, and have some suspicion that it has been fabricated to excite jealousies against the convention, with a view to an opposition to their recommendations; at all events, I wish you, if possible, to trace its source, and send it to you for that purpose.

* Daily Advertiser, August 18, 1787

"Whetmore must of course say where he got it, and by pursuing the information, we may at last come at the author. Let me know the political connections of this man, and the complexion of the people most active in the circulation of the letter." It appears from the reply of Colonel Wadsworth, that he had referred the inquiry to Colonel Humphries, whose letter to Hamilton of the first of September, states that this letter had been printed in a Fairfield paper of the twenty-fifth of July past. "Whetmore informs me that when he first saw it, it was in the hands of one Jared Mansfield, who, I believe, has formerly been reputed a loyalist. Indeed, it seems to have been received and circulated with avidity by that class of people, whether fabricated by them or not. I think there is little doubt it was manufactured in this state. Some think the real design was to excite the apprehensions of the anti-federalists, with the idea that the most disastrous consequences are to be expected, unless we shall accept the proceedings of the convention; but others, with more reason, that it was intended to feel the public pulse, and to discover whether the public mind would be startled with propositions of royalty. The quondam tories have undoubtedly conceived hopes of a future union with Great Britain, from the inefficacy of our government, and the tumults which prevailed in Massachusetts during the last winter.

"It seems, by a conversation I have had here, that the ultimate practicability of introducing the bishop of Osnaburgh, is not a novel idea among those who were formerly termed loyalists. Ever since the peace, it has been occasionally talked of and wished for. Yesterday, where I dined, half jest, half earnest, he was given as the first toast.

"I leave you now, my dear friend, to reflect how ripe we are for the most mad and ruinous project that can be suggested, especially when, in addition to this view, we

take into consideration how thoroughly the patriotic part of the community, the friends of an efficient government, are discouraged with the present system, and irritated at the popular demagogues, who are determined to keep themselves in office at the risk of every thing.

"I am happy to see you have had the boldness to attack, in a public paper, the anti-federal dogmas of a great personage of your state. Go on, and prosper. Were the men of talents and honesty throughout the continent properly combined into one phalanx, I am confident they would be competent to hew their way through all opposition, and establish a government calculated to promote the happiness of mankind, and make the revolution a blessing instead of a curse." Here this matter terminated. It appears from a subsequent memorandum of Hamilton's, that though there was little to fear from the project, that he did not consider it entirely destitute of reality.

His allusion, in his letter to King, to "whispered changes" in the scheme which gave it a higher tone, referred to several additional powers proposed to be vested in the legislature, which were referred; to a modification in the mode of electing, and in the duration and powers of the executive; to an enlargement of the jurisdiction of the judicial department; and to a full declaration of the supremacy of the constitution and laws of the United States,—in all of which may be seen an adoption of, or approximation to, the principles in his plan.

The tone of the convention was evidently undergoing a change, and the chief collision at this period grew out of an effort on the part of the non-slaveholding states to restrain the extension of that evil, and on the part of the planting states to exclude the power of levying duties on exports, and, by requiring the assent of two-thirds of the legislature to the enactment of a navigation act, or to acts

regulating commerce,* to provide against a danger long the source of great but groundless apprehension in that part of the union.

In the beginning of September, Hamilton resumed his seat in the convention. No means exist of showing minutely the several propositions of which he was the author.

The great modifications the system underwent subsequent to this period, in conformity with his previously avowed opinions, and the close analogy between parts of the existing constitution and the plan of government he had framed, give the evidence of his efficient participation in the closing labours of that body. That he was elected a member of the last committee appointed, with instructions to revise the style and arrange the articles agreed to by the house, refutes the impression sought to be given, that he remained, at so interesting a crisis of this country, an almost inactive spectator of the proceedings of a great council, to the formation of which he had devoted all his energies.

A statement of a member of that committee of revisal, of distinguished talent and character, is to the point on this question. "If," Doctor Johnson remarked, "the constitution did not succeed on trial, Hamilton was less responsible for that result than any other member, for he fully and frankly pointed out to the convention what he apprehended were the infirmities to which it was liable. And if it answered the fond expectations of the public, the community would be more indebted to Hamilton than to any other member; for, after its essential outlines were agreed to, he laboured most indefatigably to heal those infirmities, and to guard against the evils to which they might expose it."

* In a division on this question of commercial regulation, Aug. 29, the votes were for the restriction, Maryland, Virginia, North Carolina, and Georgia; against it, the other seven states, including South Carolina.

On the fourth of September, the grand committee of each state made an important report.

One branch of it gave full fiscal power to the government. The legislature were invested with a "power to lay and collect taxes, duties, imposts, and excises, to pay the debts, and to provide for the common defence and general welfare of the United States."

The office of the executive had been reconsidered. His term was reduced from seven to four years, and, adopting in part Hamilton's views, he was to be chosen by electors; but, reluctant to relinquish the policy which would consider the states, and not the people, of the union as the basis of the constitution, each state was to appoint, "in such manner as its legislature may direct, a number of electors equal to its representation in congress." If the candidate should not have a majority of the ballots of the whole number of electors, the eventual choice devolved on the *senate*.

Hamilton was opposed to this provision—it being an essential part of his policy, that the chief magistrate should not be chosen by any pre-existing body, and should be the representative of the people, and not of the states. The eventual choice by the senate was also repugnant to his views. He saw, as an inevitable consequence, that many of the states, to secure to their senators an ultimate control over the executive, would defeat the choice by electors. Rather than incur this evil, to which, as the president was re-eligible, would be superadded the danger of a corrupt influence being exerted by him upon the senate, he is represented as preferring that the highest electoral ballot, though not that of a majority, should appoint him.

The constitution of this office was a subject of consideration until near the termination of their deliberations: an effort being made, but defeated, to extend the executive term from four years to seven, to declare him not

re-eligible, and to restore the choice to the national legislature.

Hamilton's views as to the structure of the government, were modified during the progress of these discussions.

In his minutes of the debates taken at an early period of its deliberations, this remark is found: "At the period which terminates the duration of the executive, there will be always an awful crisis in the national situation." This apprehension grew with his reflections; and when he saw that the senate were to be chosen for a period of only six years, with terms ceasing by rotation, and to be chosen by the states in their sovereign capacities, and not by electors of the people, it became a necessary consequence that he would limit the duration of the executive office proportionably. A president of so great duration as good behaviour, with a senate of so limited a duration, would soon have become its master.

Influenced by these considerations, he drew up a second plan while the convention was sitting, which limited the term of the president to only three years.

The powers of the president were again discussed, and were established according to the provisions in his first plan. He was declared to be commander-in-chief of the army and navy of the United States, and of the militia of the several states. All treaties were to be made by him, with the advice and consent of the senate, with this qualification, that "two-thirds of the senators present concur." In defining the power of appointment, with the exception that the senate were to have a voice in that of the heads of the executive departments, his plan was also closely followed. The other provisions as to this great office, were analogous to those he had devised; and though without the guards he had sought to interpose, the great principle was finally established, that he was to be chosen through the medium of electors chosen by the people.

His first plan, it is seen, contemplated a house of representatives, to consist in the first instance of one hundred members. This number was proposed by Hugh Williamson, but was not approved.

A house of representatives, to consist of sixty-five members, which the scheme then before the convention had in view, he thought was on so narrow a scale as to be dangerous, and justly to warrant a jealousy for the liberty of the country. It was the more important in his view to enlarge it, because of the determination to give the eventual choice of the president to that branch of the legislature, and from a belief, as he remarked, "that the connection between the president and senate would tend to perpetuate him by corrupt influence."* Hamilton's "earnestness and anxiety" on this point were felt by Washington, and after the convention had refused to enlarge the representation, at the last moment of its sitting, when he rose to put the final question on the constitution, he requested that the ratio of representation should be established at thirty instead of forty thousand for each representative, until a census should be taken. The diminished ratio was unanimously assented to. In further security of liberty, Hamilton's important precaution had been adopted, excluding any "religious test" as a qualification for office, but omitting the prohibition in his plan of the establishment "by law of any religious sect or denomination."

One article of the draft then before that body provided that, on the application of the legislatures of two-thirds of the states in the union for an amendment of the constitution, the legislature of the United States should call a convention for that purpose.

To this article two serious objections existed: one, that such an application would not be made by the states, unless

* Madison's Debates, 1533.

with a view to increase their powers, and the more enfeeble the general government; the other, the danger to be apprehended of throwing open the whole constitution to a future convention, a measure which might result in a dissolution of the union.

Hamilton's plan avoided these evils. Unwilling to lose his hold upon the constitution about to be recommended as the great bond of union, it provided that amendments might be proposed by the legislature of the United States, two-thirds of its members concurring, which, if ratified by the legislatures or conventions of two-thirds of the states composing the union, should become parts of the still existing constitution.

His plan also probably led to the provisions in the fifth article of the constitution, which was the result of a compromise.

The draft of a constitution reported on the sixth of August, proposed that it should be laid before congress for their approbation, and declared it as "the opinion of the convention," that it should be afterwards submitted to a convention, to be chosen in each state under the recommendation of its legislature, to receive its ratification. Should congress not have thought proper to submit the constitution to be ratified, an event which, from the temper previously displayed by that body, was not improbable, the labours of the convention would have been regarded as little more than a solemn farce.

Hamilton's plan declared, "that this constitution *shall* be submitted to the consideration of conventions in the several states, the members whereof *shall* be chosen by the people, under the direction of their legislatures; the ratification of each state being final, with power to each convention, thus immediately expressing the will of the people to appoint its senators and representatives, who, as Washington would be the choice, were to elect the first president.

Thus the establishment of the constitution was ensured, the people of each state ratifying it, becoming by that act parties to it, and forming the nucleus of a more extended union.

The last article of the present constitution was evidently framed in reference to this provision, though it embodied a vicious principle of the confederation; declaring that "the ratification of the conventions of nine* states shall be sufficient for the establishment of the constitution between the states so ratifying" it.

A revised plan of the constitution was reported by Johnson, on the twelfth of September, with a letter to congress stating it to be the result of a spirit of amity, and of that mutual deference and concession which the peculiarity of their political situation rendered indispensable. Several amendments having been made to the plan, an engrossed copy was read before the convention on the seventeenth of September.

Though doubting much of the efficacy of several of its provisions, Hamilton earnestly urged the unanimous approval of all the members of the convention. Three—Gerry, Mason, and Randolph—withheld their assent; all the other delegates affixed their signatures, among which Hamilton's name appears as the sole representative of New-York.†

From the previous narrative, it appears that any uncompelled disclosure of the proceedings of the federal convention, was a breach of an express stipulation among its members. It was to be expected that those who could violate that stipulation, would not be very scrupulous as to the accuracy of their statements.

The eminent position Hamilton held before this nation, would naturally excite opposition and lead to misrepre-

* Seven had been proposed, then ten, then nine.

† The signatures were made under his supervision, as the designation of the States opposite to the members names is, in the engrossed copy, in his hand-writing.

sentation. In the absence of real grounds of inculpation, the more apt would be the resort to imputations of opinions offensive to the easily excited suspicions of a jealous population.

Such was the policy of his enemies. His theoretic doubts of the permanency of purely democratic institutions, and of their power to promote the happiness of a community, and his approval of the British constitution, however qualified, the open avowal of which ought to have produced the opposite effect, were tortured into evidence of opinions unfriendly to liberty, and these opinions were soon represented as designs.

Some additional statements are thus rendered necessary. In the reply previously referred to, made by Hamilton to an anonymous attack in the year seventeen hundred and ninety-two, at the seat of government, when nearly all the members of the convention were living, to a charge that he "*opposed* the constitution in the grand convention, because it was too republican," he remarked, "This I affirm to be a gross misrepresentation. To prove it so, it were sufficient to appeal to a single fact, namely, that the gentleman alluded to was the only member from the state to which he belonged who signed the constitution, and, it is notorious, against the prevailing weight of the official influence of the state, and against what would probably be the opinion of a large majority of his fellow-citizens, till better information should correct their first impressions. How, then, can he be believed to have opposed a thing which he actually agreed to, and that in so unsupported a situation and under circumstances of such peculiar responsibility? To this, I shall add two more facts:—One, that the member in question never made a proposition to the convention which was not conformable to the republican theory. The other, that the highest toned of any of the propositions made by him, was actually voted for by the

representatives of several states, including some of the principal ones, and including individuals who, in the estimation of those who deem themselves the only republicans, are pre-eminent for republican character. More than this I am not at liberty to say."*

* That Virginia voted for a president during good behaviour, is seen in the journal of the seventeenth of July, and that Madison gave one of these votes is not controverted by him in his report of the proceedings of that day. He only seeks to *explain* it. His statement is, that Doctor McClurg moved this term of service, with the comment, that "the probable object of this motion was merely to enforce the argument against the re-eligibility of the executive magistrate by holding out a tenure during good behaviour, as the alternative for keeping him independent of the legislature." Madison reports his own speech on this motion, which, as far as it relates to it, does not disapprove it, and adds this observation in a note: "The view here taken of the subject, was meant to aid in parrying the animadversions likely to fall on the motion of Doctor McClurg, for whom J. M. had a particular regard. The Doctor, though possessing talents of the highest order, was modest and unaccustomed to exert them in public debate." It will be recollected that this explanation is given after Hamilton's public and then uncontradicted charge, that Madison's views on this subject did not differ from his own. Complaisance strained to its utmost limit might induce these remarks to parry animadversions on a friend, but complaisance did not require that Madison should not merely have sought to parry censure of the proposition of a friend which he wished himself to be regarded as disapproving, but *that he should have recorded his vote in favour of it.* "This vote," he also observes in a note, "is not to be considered as any certain index of opinion, as a number in the affirmative *probably* had it chiefly in view to *alarm* those attached to a dependence of the executive on the legislature, and thereby facilitate some final arrangement of a contrary tendency. The avowed friends of an executive 'during good behaviour,' were not more than three or four, nor is it certain they would have adhered to such a tenure." Madison has also left the evidence that he did not at that time regard such a term of office as being inconsistent with the republican theory. "If," he wrote, "we resort for a criterion to the different principles on which different forms of government are established, we may define a republic to be, or at least may bestow that name on a government which derives all its powers directly or indirectly from the great body of the people, and is administered by persons holding their offices during pleasure, for a limited period, or *during good behaviour*," &c.—Federalist, No. 39. Thus his vote and his theory were at this time consistent with each other.—Mad. Papers, 1125, 6, 9.

A subsequent misstatement of his course in the convention, drew forth a voluntary publication from Luther Martin. "That Hamilton in a most able and eloquent address, did express his general ideas upon the subject of government, and of that government which would in all human probability be most advantageous for the United States, I admit; but, in thus expressing his sentiments, he did not suggest a wish that any one officer of the government should derive his power from any other source than the people; that there should be in any instance an hereditary succession to office, nor that any person should continue longer than during good behaviour."

Another publication appeared, charging him with having proposed a monarchy to the convention. This was denied, and it was replied, that "he proposed a system composed of three branches, an assembly, a senate, and a governor. That the assembly should be elected by the people for three years, and that the senate and governor should be likewise elected by the people, during good behaviour."

In answer to this publication, Hamilton published a full explanatory view of the propositions made by him.

"Thus the charge," he said, "is at length reduced to specific terms. Before it can be decided, however, whether this would be a *monarchy* or a *republic*, it seems necessary to settle the meaning of those terms.

"No exact definitions have settled what is or is not a *republican government* as contradistinguished from a *monarchical*. Every man who speaks or writes on the subject, has an arbitrary standard in his own mind. The mad democrat will have nothing republican which does not accord with his own mad theory. He rejects even representation. Such is the opinion held by a man, now one of Mr. Jefferson's ministers. Some authors denominate every government a monarchy, in which the executive authority is placed in a single hand, whether for life or for years, and wheth-

er conferred by election or by descent. According to this definition, the actual government of the United States, and of most of the states, is *a monarchy*.

"In practice, the terms republic and republican have been applied with as little precision. Even the government of England, with a powerful hereditary king, has been repeatedly spoken of by authors as a commonwealth or republic. The late government of Holland, with an hereditary stadtholder, was constantly so denominated. That of Poland, previous to the dissolution of the state, with an executive for life, was never called by any other name.

"The truth seems to be, that all governments have been deemed republics, in which a large portion of the sovereignty has been vested in the whole or in a considerable body of the people; and that none have been deemed monarchies, as contrasted with the republican standard, in which there has not been an *hereditary* chief magistrate.

"Were we to attempt a correct definition of a republican government, we should say, 'That is a republican government, in which both the executive and legislative organs are appointed by a popular election, and hold their offices upon a responsible and defeasible tenure.' If this be not so, then the tenure of good behaviour for the judicial department is anti-republican, and the government of this state is not a republic; if the contrary, then a government would not cease to be republican because a branch of the legislature, or even the executive, held their offices during good behaviour. In this case the two *essential criteria* would still concur—the creation of the officer by a popular election, and the possibility of his removal in the course of law, by accusation before, and conviction by, a competent tribunal.

"How far it may be expedient to go, even within the bounds of the theory, in framing a constitution, is a different question, upon which we pretend not to give our

opinion. It is enough for the purpose of our assertion, if it be *in principle* correct. For even then, upon the statement of the 'citizen' himself, General Hamilton did not propose *a monarchy*.

"Thus much too we will add, that whether General Hamilton at any stage of the deliberations of the convention did, or did not make the proposition ascribed to him, it is certain that his more deliberate and final opinion, adopted a moderate term of years for the duration of the office of president; as also appears by a plan of a constitution, *in writing now in this city*, drawn up by that gentleman in detail.

"Whether the *first* system presented by Mr. Hamilton, was the one to which he gave a decided preference, it would be difficult to say, since we find him adopting and proposing *a different one* in the course of the sitting of the convention. It may have been that his opinion was nearly balanced between the two; nay, it is possible he may have really preferred the *one last proposed*, and that the former, like many others, was brought forward to make it the subject of discussion, and see what would be the opinions of different gentlemen on so momentous a subject. And, it is now repeated with confidence, that the *Virginia* delegation did vote for the most energetic form of government, and that Mr. Maddison was of the number. But we desire to be distinctly understood, that it was never intended, by mentioning this circumstance, to impeach the purity of Mr. Maddison's motives. To arraign the morals of any man, because he entertains a speculative opinion on government different from ourselves, is worse than arrogance. He who does so, must entertain notions in ethics extremely crude, and certainly unfavourable to virtue."

It is not to be believed that such a statement would have been thus publicly made, challenging contradiction, during the lives of so many members of the convention, if it had been in any respect erroneous; nor that Hamilton would

have referred to his second plan of a constitution as being "in writing now in this city," unless it was there to be produced. This was a topic of much interest, and much canvassed in the political controversies which had arisen, yet his representation was not controverted. Another exposition of his opinions is found in a letter addressed by him to Colonel Pickering during the following year.*

* New-York, September 16, 1803.

MY DEAR SIR,

I will make no apology for my delay in answering your inquiry some time since made, because I could offer none which would satisfy myself. I pray you only to believe that it proceeded from any thing rather than want of respect or regard. I shall now comply with your request.

The highest toned propositions which I made in the convention were for a president, senate, and judges, during good behaviour; a house of representatives for three years. Though I would have enlarged the legislative power of the general government, yet I never contemplated the abolition of the state governments; but on the contrary, they were, in some particulars, constituent parts of my plan.

This plan was, in my conception, conformable with the strict theory of a government purely republican; *the essential criteria* of which are, that the principal organs of the executive and legislative departments be elected by the people, and hold their offices by a responsible and temporary or defeasible tenure.

A vote was taken on the proposition respecting the executive. Five states were in favour of it; among these Virginia; and though, from the manner of voting by delegations, individuals were not distinguished, it was morally certain, from the known situation of the Virginia members, (six in number, two of them, Mason and Randolph, professing popular doctrines,) that Madison must have concurred in the vote of Virginia. Thus, if I sinned against republicanism, Mr. Madison was not less guilty.

I may truly then say that I never proposed either a president or senate for life, and that I neither recommended nor meditated the annihilation of the state governments.

And I may add, that in the course of the discussions in the convention, neither the propositions thrown out for debate, nor even those voted in the earlier stages of deliberation, were considered as evidences of a definitive opinion in the proposer or voter. It appeared to me to be in some sort understood that, with a view to free investigation, experimental propositions might be made, which were to be received merely as suggestions for consideration.

These statements receive light from the letter of a contemporary.* "I will conclude this long epistle by a concise account of a conversation had with Hamilton, which may not be deemed uninteresting, since it exhibits him as

Accordingly it is a fact, that my final opinion was against an executive during good behaviour, on account of the increased danger to the public tranquillity incident to the election of a magistrate of this degree of permanency. In the plan of a constitution which I drew up while the convention was sitting, and which I communicated to Mr. Madison about the close of it, perhaps a day or two after, the office of president has no greater duration than for three years.

This plan was predicated upon these bases:—1. That the political principles of the people of this country would endure nothing but a republican government.—2. That in the actual situation of the country, it was itself right and proper that the republican theory should have a fair and full trial.—3. That, to such a trial it was essential that the government should be so constructed as to give it all the energy and the stability reconcilable with the principles of that theory. These were the genuine sentiments of my heart, and upon them I then acted.

I sincerely hope that it may not hereafter be discovered that through want of sufficient attention to the last idea, the experiment of republican government, even in this country, has not been as complete, as satisfactory, and as decisive, as could be wished.†

* Governor Lewis.

† In the appendix, No. 5, to Madison's Debates, this letter is referred to as evidence that "Colonel Hamilton was under the erroneous impression that this paper limited the duration of the presidential term to three years."

The "*paper*" thus referred to by Madison, is the *first* plan. The term of *three years* is in the *second plan*. Madison has not left behind him the original of either of the plans which Hamilton gave him, but his copy of one of them. Hamilton's statement is, that he "*communicated* to Madison the plan in which the office of president has no greater duration than three years, not that he left it with him, but on the contrary publicly refers to it as "a plan of a constitution in writing *now in this city*, drawn up by that gentleman in detail."

Having obtained a copy of the *first plan*, which probably was used during the debates in the convention, Madison retains it in his possession, and refers to it as evidence of Hamilton's "want of memory," and not to the *second plan*, which Hamilton tenders as giving the testimony to the change of his opinions. But he does not deny that there was a *second plan*. It will be remarked that the volume containing the Journal of the Convention deposited in the department of state is imperfect—the minutes of September 15th being crossed with a pen, and that the deficiency is supplied by minutes furnished by Madison. Thus, the evidence which this part of the journal might have given on this subject, is lost.—Journal, p. 379, in a note.

a statesman who looked beyond the present to the far future interests of his country. It is well known that he never was in the habit of concealing or disguising his sentiments on the subject of government.

"Openly denouncing, on all occasions, the assertion 'that the best administered was best,' as a political heresy, maintaining the superior aptitude to a good administration of some systems over others, and giving the preference, abstractedly considered, to a well-balanced and limited monarchy, he was at the same time undeviating from the opinion that such a government could not be established in the United States, because a necessary ingredient in its composition, a privileged order, would be sought for in vain among a people whose favourite motto was 'Liberty and Equality.' When, therefore, the paragraphists of the day announced that he had proposed in the convention of the states a monarchic form of government, I was satisfied it was the effect of misconception or designed misrepresentation.

"A second version, that he proposed a presidency for life, I thought more probable, but determined to suspend my opinion until I should have an interview with him. This was afforded to me soon after his return to the city of New-York. The monarchic proposition, as I expected, he explicitly denied. The other he admitted, with the qualification, a president during good behaviour, or for a competent period, subject to impeachment, with an ineligibility forever thereafter.

"'My reasons,'" he said, "'were, an exclusion, as far as possible, of the influence of executive patronage in the choice of a chief magistrate, and a desire to avoid the incalculable mischief which must result from the too frequent elections of that officer. In conclusion, he made the following prophetic observation: 'You nor I, my friend, may not live to see the day, but most assuredly it will come, when

every vital interest of the state will be merged in the all-absorbing question of *who shall be the next* PRESIDENT?'"

A statement from another source is decisive as to his final opinion. It is from the pen of Jefferson.* "*My* wish was that the President should be elected for seven years, and be *ineligible* afterwards. This term I thought sufficient to enable him, with the concurrence of the legislature, to carry through and establish any system of improvement he should propose for the general good. But the practice adopted, I think, is better, allowing his continuance for eight years, with a liability to be dropped at half-way of the term, making that a period of probation. That his continuance should be restrained to seven years, was the opinion of the Convention at an earlier stage of its session, when it voted that term, by a majority of eight against two, and by a simple majority, that he should be *ineligible* a second time. This opinion was confirmed by the House so late as July 26, referred to the Committee of Detail, reported favorably by them, and changed to the present form by final vote, *on the last day, but one only, of their session.* Of this change, three States expressed their disapprobation: NEW YORK, by RECOMMENDING AN AMENDMENT, that the President SHOULD NOT BE ELIGIBLE A THIRD TIME, and Virginia and North Carolina, that he should not be capable of serving more than eight, in any term of sixteen years; and although this amendment has not been made in form, yet practice seems to have established it." As Hamilton was the *only* delegate then present from New York, the amendment proposing ineligibility after a second term must have proceeded from *him.*

This is a statement not casually made in the course of a correspondence, but formally drawn up by Jefferson in

* Jefferson's Works, Randolph edition, i., 64, 65.

a memoir of his life, showing minute references to the Journal of the Convention.

As to the opinions entertained by him on the theory of government, it is felt that in the mode in which, from a desire to withhold nothing, they appear, much injustice may have been done him; as in the brief of his great speech, previous to an exposition of his first plan of a constitution, the mere general heads are given without those qualifications that must have formed an essential part of it; while, of the various efforts made by him to harmonize and to adjust the different parts of the complicated scheme as it progressed, evolving new views and sources of thought, and thus informing the mind of the convention, but little can be placed before the public.

Happily, in a comparison of this brief with his numbers of the Federalist, they will be found, with the exception of his abstract discussion of the theory of government, in a great measure to have filled up its outline.

From these sources it is ascertained, that the leading maxim of Hamilton was, that a good government consists in a vigorous execution, that such vigour is "essential to the security of liberty," and that, "in the contemplation of a sound and well-informed mind, their interests never can be separated."

To reconcile the requisite vigour with the perfect security of liberty, he well knew was almost impracticable; to approximate them was all that he hoped to effect; but in what mode this could best be accomplished, was a problem which he acknowledged to be full of difficulties.

His well-founded and openly avowed doubts upon a subject which has embarrassed every reflecting practical mind, have been denounced as evidences of dispositions unfriendly to freedom, and upon so slight a basis has been raised a mass of prejudice which impeded all his efforts to promote the well-being of this country. To apply to him his own gen-

eral remark, his "enlightened zeal for the energy and efficiency of government, has been stigmatized as the offspring of a temper fond of power, and hostile to the principles of liberty." Without caring to propitiate popular prejudices on a subject as to which his own declaration is deemed sufficient—"I presume I shall not be disbelieved when I declare, that the establishment of a republican government on a safe and solid basis is an object of all others nearest and most dear to my own heart"—it is enough to refer to the whole tenor of his life.

At the age of seventeen he is seen combating the arbitrary policy of England; exhorting the American people to resistance; unfolding the future glories of the empire; rejecting with scorn the idea of a system sustained "by pensioners, placemen, and parasites;" holding up to them, as the great prize of the contest they were invited to wage, the establishment of the "steady, uniform, unshaken security of constitutional freedom," and avowing with a noble enthusiasm, which was his perpetual inspiration, "I would die to preserve the law upon a solid foundation; but take away liberty, and the foundation is destroyed."

In seventeen hundred and eighty, amidst the din and tumult of arms, displaying all the evils of a want of government, and urging "a solid confederation."

In seventeen hundred and eighty-one, pressing on the minds of the public, in the "Continentalist," the organization of a "great federative republic, closely linked in the pursuit of a common interest."

In seventeen hundred and eighty-two, inducing the legislature of New-York to propose "a general convention, authorized to revise and amend the confederation."

In seventeen hundred and eighty-three, at least an equal participator in every effort to invigorate the confederacy, framing an appeal to the people, exhibiting its infirmities, and inviting them to establish a well-balanced government.

In seventeen hundred and eighty-four, cautioning them against the excesses of liberty, and enjoining them to watch, with more intensity than the vestal fire, "this sacred deposit" which had been confided to them.

In seventeen hundred and eighty-five, imploring them to dismiss the jealousies which had been excited for their destruction, and to repose their trust where it should be placed—"all government implying trust."

In seventeen hundred and eighty-six, again addressing them from Annapolis, and invoking them, by the strongest motives, to appoint a convention empowered to frame a constitution "adequate to the exigencies of the union."

And in seventeen hundred and eighty-seven, after inducing the concurrence of New-York and the co-operation of congress, as a member of that convention, sacrificing all prejudgments; surrendering his matured opinions, and labouring until he saw a constitution framed, not such as he would have desired, but "having, as far as was consistent with its genius, all the features of a good government;" a constitution to which he pledged his support by his signature—to fulfil which pledge he devoted all his energies.

In this series of acts, having one uniform and single end—the "establishment of a republican government upon a safe and solid basis"—will be found an ample refutation of all the calumnies which have been propagated.

But, while repelling this accusation of his hostility to the existing system, it would have been a not less injustice to his memory to have concealed his distrusts of the success of an unbalanced democracy.

History had shown all free governments, either convulsed by intestine feuds and foreign influence, or prostrated before the mob and surrendered to arbitrary hands; exhibiting in every stage of their progress deeper shades of misery and humiliation.

To this current of human affairs there existed but one

exception. A government, springing up amidst the bigotry and barbarism of the middle ages, had been seen gradually moulded by the steady influence of enlightened opinion; resisting during centuries every form of violence, and when at last overthrown by the crimes of its magistrates, recovering itself by the strong influence it had itself created, and renewed in its vigour by constitutional checks, the fruits of experience; susceptible of amendment without necessarily jeoparding its existence; and notwithstanding its defects—for what government is without defects?—imparting to its people the greatest security and largest amount of durable happiness which any constitution ever had bestowed.

Thus finding in the British government a system proceeding upon the fact, that society is necessarily composed of different interests, and obviating the great difficulty of all governments by preserving a counterpoise of each interest; exerting itself, but regulated in that exertion, for its own protection. Thus seeing the realization of that for which the wise of antiquity had wished, but had not dared to hope,* which the experience of centuries had approved, can it be a source of surprise that he entertained the opinion, that "it was a model, though unattainable, to be approached as near as possible."

But his was not a blind or indiscriminate admiration. The representation that "it was his error to adhere too closely to the precedents of the British constitution; that he conceded sometimes, in these precedents, equal authority to what was good and bad, to its principles and its

* Cicero observes—de Repub. l. 2—"Esse optime constitutam rempublicam quæ ex tribus generibus illis, regali, optimo, et populari, sit modice confusa." And Tacitus, in his Annals, remarks, "Cunctas nationes, et urbes, populus aut primores, aut singuli regunt; delecta ex his et constituta reipublicæ forma laudari facilius quam evenire, vel si evenit, haud diuturna esse potest."

abuses; that he did not allow to the variety of political forms, to the flexibility of human society, a sufficient share nor a bold enough confidence,"* is founded on the calumnies of his opponents, propagated for the two-fold purpose of exciting against him the jealousy of the American people, and of impairing his permanent fame.

In his commentary on the federal constitution, when speaking of the kingdom of Great Britain, he observes:† "Her peculiar felicity of situation has, in a great degree, preserved the liberty which that country to this day enjoys, in spite of the prevalent venality and corruption."

He is previously seen to have condemned the great innovation in her system, in the vote of septennial from triennial parliaments, as producing an "overgrown power" in the crown; and referring to what he calls "these dangerous practices," he extols "the important distinction, so well understood in America, between a constitution established by the people and unalterable by the government, and alterable" by it.

He speaks also of the "ostentatious apparatus of her monarchy" as a source of expense, and adverts to her experience as presenting to mankind "so many political lessons, both of the monitory and exemplary kind."

He dwells upon the superiority, in one particular, of the federal constitution, as separating the judiciary entirely from all political agency, and points out the "absurdity of subjecting the decisions of men selected for their knowledge of the laws, acquired by long and laborious study, to the revision and control of men, who, for the want of the same advantage, cannot but be deficient in that knowledge."

Nor was he insensible to the variety of political forms

* Vie, Correspondance et Ecrits de Washington, &c., par M. Guizot.

† Federalist, Nos. 8, 53, and 56.

suggested by the flexibility of human nature, and the varying condition of society. In his letter to Washington previously quoted, he is seen to remark, that though "the people were not ripe for such a plan as he advocated, yet there was no reason to despair of their adopting one equally energetic;" and in this convention he proposed two plans of government, founded on different principles, and with different combinations of the same principle; and aided largely in forming the compound system which was adopted.

In answer to the objections derived from former experience to republican governments, he exclaims: "Happily for mankind, stupendous fabrics reared on the basis of liberty, which have flourished for ages, have, in a few glorious instances, refuted these gloomy sophisms; and, I trust, America will be the broad and solid foundation of *other* edifices, not less magnificent, which will be equally permanent monuments of their error."

Hamilton was too wise not to have known that a constitution such as that of England—though, if it had been established, it would have maintained itself—could not be established in the United States; that every attempt to introduce it with the consent of the people, would be a fruitless folly, and, without that consent, a hideous crime. He sought to effect all that was practicable under such circumstances—to embody in a republican system such checks as it would admit—to reconcile, to the utmost extent its genius would bear, energy and stability with real liberty—hoping that this great commonwealth might repose under a Constitutional Charter, granted and revocable by the people, until experience should suggest and cure its defects.

The jealousy of political rivalry has misrepresented his views, and condemned his "peculiar opinions," because they did not prevail.

But it forgot that it is the characteristic of minds of the first order to aim at objects above the common reach.

The eye that penetrates beyond the horizon of error; the hand which, amid its daily ministrations, is ever pointing to some great future good; the genius that, always fertile in expedient, feels that the power which impels, makes sure its aim;—these all are directed by a generous confidence of success, springing from conscious unexhausted resources, that will not, cannot despair.

Ordinary men do not admit the magic virtues, the almost inspiration by which they are overruled to perform their respective parts; but the influence is exerted, the plans, the institutions, the hopes of the world are raised, and though the agent may be unseen, or withdrawn, it moves on in glorious harmony with the high destinies he has prescribed.

It is true, that Hamilton's views did not all prevail, but their conservative character was imparted to this great reform, and much of its best spirit may still be due to labours which, though not wholly successful, owing to the hesitations of others, were not without the choicest fruits.*

His whole plan was not adopted; but when it is asked whose plan was, the answer is, that of no individual. "The truth is," Hamilton remarked, "the plan, in all its parts, was a plan of accommodation."

As a great bond of union to a dissolving confederacy, he valued it beyond all price; but as creating a compound government of a very extraordinary and complicated nature, in common with Washington and Patrick Henry, and other distinguished individuals, he doubted its results. "I acknowledge," he said, when recommending its adoption,

* Guizot remarks—"Hamilton must be classed among the men who have best known the vital principles and fundamental conditions of a government; not of a government such as this, but of a government worthy of its mission and of its name. There is not in the constitution of the United States an element of order, of force, of duration, which he has not powerfully contributed to introduce into it, and to cause to predominate."

"a thorough conviction, that any amendments which may upon mature consideration be thought useful, will be applicable to the organization of the government, not to the mass of its powers."

These doubts have been derided as extravagant, and the prosperity of this country has been appealed to as a complete refutation of them. How far this prosperity is to be ascribed to the influences of the constitution, other than as a mean of preserving the national union, is not easily ascertained; but certainly, without derogating from the value of that instrument, much of it may be attributed to a peculiar felicity of situation and of circumstances, independent of the government.

Nor is prosperity, in its most observed aspects, an unerring or a universal test of the excellence of political institutions; for it cannot be denied, that a nation may have fast increasing wealth, and expanding power, and widely diffused intelligence, and boundless enterprise, while principles may be at work in its system that will ultimately render all these advantages sources of evil.

Experience had hitherto been supposed to teach, that a stable government required the operative counterpoise of the different interests of property and numbers. The federal constitution has substituted for these, theoretic checks; a senate representing states, which are only the artificial representatives of different aggregates of the people, and a house of representatives chosen directly by the same people under the influence of those states—this senate of greater duration than the popular branch, and therefore supposed to be removed from immediate popular impulses, yet by the doctrine of instruction, which is fast becoming a law of the system, rendered the mere organ of these impulses; an executive chosen by the members of separate electoral colleges of the people of the states, sitting apart and supposed to be secure from the too direct

action of the mass, yet in fact chosen, not to deliberate on the merits of a candidate, but pledged to carry into effect the nomination of a caucus—that candidate thus elevated, filling an executive department of limited powers, but possessing powers far above the constitution, as the common focus of the passions of the multitude.

Other of the ascertained effects of the system may also be adverted to. Among the chief ends of government are—security against foreign aggression—internal peace. To attain the first of these objects, the force of the community must be at the command of the common sovereign; of the latter, the law is the shield. Yet, in the only war which has been waged, some of the most powerful members of the union have been seen to withhold their military force from the arm of the general government; expressly charged with the general defence, uncontrolled, uncompelled; while the tranquillity and existence of the union has been jeoparded by the open defiance by a state of the only peaceful sanction, the judicial department of the United States, and a great power of the national government, the want of which was a primary motive to its establishment, is the subject of a compromise.

Modern discoveries of art have supplied new and important ligaments to this union. Time, with its assimilating influences, has given that union strength. Its mutual glory has extended over it a protecting canopy; but while the patriot will ever devote himself to its preservation, he is too well aware how much more probable is its dismemberment than its reunion, to regard as a visionary skepticism the paternal wisdom of its founders, who feared and doubted, while they loved and hoped.

The following observations of Hamilton, written just as the general convention adjourned, give his impressions at that time.

"The new constitution has in favour of its success these

circumstances: A very great weight of influence of the persons who framed it, particularly in the universal popularity of General Washington. The good-will of the commercial interest throughout the states, which will give all its efforts to the establishment of a government capable of regulating, protecting, and extending the commerce of the union. The good-will of most men of property in the several states, who wish a government of the union able to protect them against domestic violence, and the depredations which the democratic spirit is apt to make on property; and who are besides anxious for the respectability of the nation. The hopes of the creditors of the United States, that a general government possessing the means of doing it, will pay the debt of the union. A strong belief in the people at large of the insufficiency of the present confederation to preserve the existence of the union, and of the necessity of the union to their safety and prosperity; of course, a strong desire of a change, and a predisposition to receive well the propositions of the convention.

"Against its success is to be put, the dissent of two or three important men in the convention, who will think their characters pledged to defeat the plan; the influence of many *inconsiderable* men in possession of considerable offices under the state governments, who will fear a diminution of their consequence, power, and emolument, by the establishment of the general government, and who can hope for nothing there; the influence of some *considerable* men in office possessed of talents and popularity, who, partly from the same motives, and partly from a desire of *playing a part* in a convulsion for their own aggrandizement, will oppose the quiet adoption of the new government; (some considerable men out of office, from motives of ambition may be disposed to act the same part.) Add to these causes the disinclination of the people to taxes, and

of course to a strong government; the opposition of all men much in debt, who will not wish to see a government established, one object of which is to restrain the means of cheating creditors; the democratical jealousy of the people, which may be alarmed at the appearance of institutions that may seem calculated to place the power of the community in few hands, and to raise a few individuals to stations of great pre-eminence; and the influence of some foreign powers, who, from different motives, will not wish to see an energetic government established throughout the states.

"In this view of the subject, it is difficult to form any judgment whether the plan will be adopted or rejected. It must be essentially matter of conjecture. The present appearances and all other circumstances considered, the probability seems to be on the side of its adoption.

"But the causes operating against its adoption are powerful, and there will be nothing astonishing in the contrary.

"If it do not finally obtain, it is probable the discussion of the question will beget such struggles, animosities, and heats in the community, that this circumstance, conspiring with the *real necessity* of an essential change in our present situation, will produce civil war. Should this happen, whatever parties prevail, it is probable governments very different from the present in their principles, will be established. A dismemberment of the union, and monarchies in different portions of it, may be expected. It may however happen that no civil war will take place, but several republican confederacies be established between different combinations of the particular states.

"A reunion with Great Britain, from universal disgust at a state of commotion, is not impossible, though not much to be feared. The most plausible shape of such a business would be, the establishment of a son of the present mon-

arch in the supreme government of this country, with a family compact.

"If the government be adopted, it is probable General Washington will be the president of the United States. This will ensure a wise choice of men to administer the government, and a good administration. A good administration will conciliate the confidence and affection of the people, and perhaps enable the government to acquire more consistency than the proposed constitution seems to promise for so great a country. It may then triumph altogether over the state governments, and reduce them to an entire subordination, dividing the larger states into smaller districts. The *organs* of the general government may also acquire additional strength.

"If this should not be the case, in the course of a few years, it is probable that the contests about the boundaries of power between the particular governments and the general government, and the *momentum* of the larger states in such contests, will produce a dissolution of the union. This, after all, seems to be the most likely result.

"But it is almost arrogance in so complicated a subject, depending so entirely on the incalculable fluctuations of the human passions, to attempt even a conjecture about the event.

"It will be eight or nine months before any certain judgment can be formed respecting the adoption of the plan."

Anxious as his forebodings were, it will be seen that his exertions were not for a moment relaxed. While he did not disguise his doubts, he declared, "I am persuaded it is the best which our political situation, habits, and opinions will admit, and superior to any the revolution has produced." "Though it may not be perfect in every part, it is, upon the whole, a good one, is the best that the present situation and circumstances of the country will permit."

Then followed his closing appeal, recommending its adoption in language which every revolving year renders more impressive.

"To balance a large society on general laws," it had been said,* "the judgments of many must unite in the work. EXPERIENCE must guide their labour, TIME must bring it to perfection, and the FEELING of inconveniences must correct the mistakes which they *inevitably* fall into in their first trials and experiments." "These judicious reflections," Hamilton remarked, "contain a lesson of moderation to all the sincere lovers of the union, and ought to put them upon their guard against hazarding anarchy, civil war, a perpetual alienation of the states from each other, and perhaps the military despotism of a victorious demagogue, in the pursuit of what they are not likely to obtain but from TIME and EXPERIENCE. It may be in me a defect of political fortitude, but I acknowledge that I cannot entertain an equal tranquillity with those who affect to treat the dangers of a longer continuance in our present situation as imaginary. A NATION without a NATIONAL government, is an awful spectacle. The establishment of a constitution, in time of profound peace, by the voluntary consent of a whole people, is a PRODIGY, to the completion of which I look forward with trembling anxiety."

* Hume's Essays, v. 1, p. 128.

CHAPTER XLIX.

From this scene of deepest interest, Hamilton now returned to the toils of his profession, often interrupted by public avocations.

Of the many causes in which he was engaged, one greatly moved the feelings of those around him. It was the defence of a member of the Society of Friends on a charge of libel, for having publicly exposed a person who had been detected kidnapping free blacks in the city of New York, and selling them in Charleston. The effort was such as a crime of this atrocity would call forth, and was successful. Nor did his grateful client forget that the proffered fee was returned with a request, "as they were both engaged in the cause of humanity that his declining it might not be mentioned."

Another occurrence at this time indicates his benignity. Colonel Antil of the Canadian Corps, a friend of General Hazen, retired penniless from the service—his military claims, a sole dependence, being unsatisfied. Hoping to derive subsistence from the culture of a small clearing in the forest, he retired to the wilds of Hazenburgh. His hopes were baffled, and in his distress he applied to Hamilton for relief. His calamities were soon after embittered by the loss of his wife, leaving infant children. With one of these Antil visited New York,

to solicit the aid of the Cincinnati, and there sank under the weight of his sorrows. Hamilton immediately took the little orphan home, who was nurtured with his own children, and became the wife of a prosperous merchant.*

An officer of the American army relates another instance of his kindness. After various unsuccessful efforts to gain a livelihood, this gentleman repaired to New York, waited on his comrade, and in great despondence recounted his mishaps. "Cheer up, my friend," said Hamilton, "the prospect is not very bright, but let us see. I will assist you." "You," rejoined the Colonel, "when you have not more money than is necessary for yourself." "But I can borrow," Hamilton replied. He immediately drew a note, sent it to the bank, and handed the proceeds to his comrade, who ascribed the ease and comforts of his declining years to this opportune aid.

These personal kindnesses were not lost on the brave men with whom it was his delight to associate. Nor was his private influence ever withheld from the national good. "To men," he wrote, at a meeting of the Cincinnati in New York, "whose views are not unfriendly to those principles which form the basis of the Union, and the only sure foundation of the tranquillity and happiness of this country, it can never appear criminal, that a class of citizens who have had so conspicuous an agency in the American Revolution as those who compose the Society of the Cincinnati, should pledge themselves to each other, in a voluntary association, to support, by all the means consistent with the laws, that noble fabric of united independence, which, at so much hazard, and with

* Arthur Tappan.

so many sacrifices, they have contributed to erect; a fabric on the solidity and duration of which the value of all they have done must depend! and America can never have cause to condemn an institution calculated to give energy and extent to a sentiment favorable to the preservation of that Union, by which she established her liberties, and to which she must owe her future peace, respectability, and prosperity.

"Experience, we doubt not, will teach her, that the members of the Cincinnati, always actuated by the same virtuous and generous motives which have hitherto directed their conduct, will pride themselves in being, through every vicissitude of her future fate, the steady and faithful supporters of her liberties, her laws, and her government."

This tranquil calm was but a prelude to the stormy contentions which now began to agitate the bosom of the confederacy—a period when the interests, principles, prejudices, and passions of an excitable population, jealous of control, keenly alive to the value of their liberties, are all beheld in violent conflict; when, during nearly two years of probation, the American character was put to the severest trial—resulting in a signal triumph.

In a time of such national commotion, it could not have been expected, that he who had been so conspicuously active would escape the shafts of hostility.

Hamilton's comments on the conduct of Governor Clinton have been mentioned. A reply to those comments appeared over the signature of a "Republican," in which he was not only reproved for having rebuked the Chief Magistrate of the State, but was charged with having entered the family of the Commander-in-chief by solicitation, and with having left it in discredit.

This charge was pointed out to him, and he replied over his own signature. In a beautiful appeal, he vindicated his previous publication, "as an honorable and open attempt to unmask what appeared to him the pernicious intrigue of a man high in office, to preserve power and emolument to himself at the expense of the union, peace, and happiness of America." A clamor had been raised that this publication was an invasion of the right of the first magistrate of the State to deliver his sentiments on a matter of public concern. Hamilton admitted this to be an undoubted right, and often a duty. "But," he said, "every right may be abused by a wrong exercise of it. The only question is, whether he has used this right in the present instance properly or improperly, and whether it became him by anticipation to endeavor to prejudice the community against the unknown and undetermined measures of a body to which the general voice of the Union had delegated the important trust of concerting and proposing a plan for reforming the National Constitution.

"The apologists for the Governor," he observes, "in the intemperate ardor of their zeal for his character, seem to forget another *right* very precious to the citizens of a free country, *that of examining the conduct of their rulers.* These have an undoubted right, within the bounds of the Constitution, to speak and to act their sentiments; but the citizen has an equal right to discuss the propriety of these sentiments, or of the manner of advocating or supporting them. To attempt to abridge the last right by rendering the exercise of it odious, is to attempt to abridge a privilege, the most essential of any to the security of the people. The laws which afford sufficient protection to the magistrate will punish the excess of this privilege. Within the bounds they allow, it is the BULWARK OF PUB-

BIG. LIBERTY. There is no danger that the rights of a man at the head of the Government (possessing all the influence to be derived from long continuance in office, the disposition of lucrative places, and *consummate talents* for popularity) can be injured by the voice of a private individual. There is as little danger, that the spirit of the people of this country will ever tolerate attempts to seduce, to awe, or to clamor them out of the privilege of bringing the conduct of men in power to the bar of public condemnation. It is the trick of the party to traduce every *independent man* opposed to their views, the better to preserve to themselves that power and consequence, to which they have no other title than their arts of deceiving the people." As to himself, "he defied their malevolent ingenuity, challenging them to produce a single instance of his conduct, public or private, inconsistent with the rules of integrity and honor, a single instance that may ever denominate him selfish or interested—a single instance in which he has either forfeited the confidence of the people, or failed in obtaining any proof of their favor for which he had been a candidate—a confidence which, he acknowledged, had greatly exceeded his deserts." This controversy prompted him to address a letter to Washington, in which he referred to an insinuation that "he palmed himself upon him and was dismissed from his family." "I confess," he adds, "it would mortify me to lie under the imputation either of having obtruded myself into the family of a General, or of having been turned out of it. The new Constitution is as popular in this city as is possible for any thing to be, and the prospect thus far favorable to it throughout the State. But there is no saying what turn things may take, when the full flood of official influence is let loose against it. This is to be expected, for though the Gover-

nor has not publicly declared himself, his particular connections and confidential friends are loud against it."

Washington replied: "As you say, it is insinuated by some of your political adversaries, and may obtain credit, that you *palmed* yourself upon me, and was *dismissed* from my family, and call upon me to do you justice by a recital of the facts, I do therefore explicitly declare, that both charges are entirely unfounded. With respect to the first, I have no cause to believe that you took a single step to accomplish, or had the most distant idea of receiving an appointment in my family till you were invited thereto; and with respect to the second, that your quitting it was altogether the effect of your own choice.

"Having scarcely been from home since my return from Philadelphia, I can give but little information with respect to the general reception of the new Constitution in *this* State. In Alexandria, however, and some of the adjacent counties, it was embraced with an enthusiastic warmth of which I had no conception. I expect, notwithstanding, violent opposition will be given to it by some characters of weight and influence in the State."

Washington had in the first instance resolved, as appears from a letter to Lafayette, written the day after the Federal Convention adjourned, to take no part in reference to its proceedings.* "The Constitution," he wrote, "is now a child of fortune, to be fostered by some and buffeted by others. What will be the general opinion on the reception of it is not for me to decide; nor shall I say any thing for or against it. If it be good, I suppose it will work its way; if bad, it will recoil on the framers."

His language soon became decisive, interposing with a few, cautiously adverting to the conduct of others.

* Washington's Writings, ix. 265.

Thus he wrote to Madison, as to leading opponents of the measure: "The political tenets of Col. Mason and Col. R. H. Lee, are always in unison. It may be asked of them, which gives the tone? Without hesitation, I answer, the latter, because the latter, I believe, will receive it from no one."

Hamilton replied on the nineteenth of October: "I am much obliged to your Excellency for the explicit manner in which you contradict the insinuations mentioned in my last letter. The only use I shall make of your answer will be to put it into the hands of a few friends. The Constitution proposed, has in this State warm friends, and warm enemies. The first impressions everywhere are in its favor; but the artillery of its opponents makes some impression. The event cannot yet be foreseen. The inclosed is the first number of a series of papers to be written in its defence.

"I send you also, at the request of the Baron de Steuben, a printed pamphlet containing the grounds of an application lately made to Congress. He tells me, there is some reference to you, the object of which he does not himself seem clearly to understand; but imagines it may be in your power to be of service to him.

"There are public considerations that induce me to be somewhat anxious for his success. He is fortified with materials, which, in Europe, could not fail to establish the belief of the contract he alleges. The documents of service he possesses, are of a nature to convey an exalted idea of them. The compensations he has received, though considerable, if compared with those which have been received by American officers, will, according to European ideas, be very scanty in application to a *stranger* who is acknowledged to have rendered essential services. Our reputation abroad is not at present too high. To

dismiss an old soldier empty and hungry—to seek the bounty of those on whose justice he has no claims, and to complain of unkind returns and violated engagements, will certainly not tend to raise it. I confess, too, there is something in my feelings which would incline me, in this case, to go farther than might be strictly necessary, rather than drive a man, at the Baron's time of life, who has been a faithful servant, to extremities. And this is unavoidable, if he does not succeed in his present attempt.

"What he asks would, all calculations made, terminate in this—an allowance of his five hundred and eighty guineas a year. He only wishes a recognition of the contract. He knows that, until affairs mend, no money can be produced. I do not know how far it may be in your power to do him any good; but I shall be mistaken, if the considerations I have mentioned do not appear to your Excellency to have some weight."

Speaking of an application for a copy of a Report of a Committee of Congress which conferred with the Baron on his arrival in the United States, Washington answered, "It throws no other light on the subject than such as is to be derived from the disinterested conduct of the Baron. No terms are made by him, nor will he accept of any thing but with general approbation. I have, however, in my letter, inclosing this report to the Secretary, taken occasion to express an unequivocal wish, that Congress would reward the Baron for his services, sacrifices, and merit to his entire satisfaction. It is the only way in which I could bring my sentiments before that honorable body, as it has been an established principle with me to ask nothing from it."

These influences, high and earnest as they were, proved fruitless.

Hamilton was in the mean time looking intently on the course of public opinion in relation to the new Constitution. He had recently visited Albany to attend a term of the Supreme Court. There he found, that the opposition formed against it had so far matured their plans as to render its fate in New York almost desperate. The secession from the convention of two of its delegates had given rise to wide-spread rumors of projects in that body hostile to the liberties of the people; and the determined influence to which those individuals had yielded, compelled them to unite in the exertions to defeat its ratification.

A letter from a member of Congress, published at this time, speaking of "the difficulty of getting it adopted in New York," states: "The government has already discovered strong marks of disapprobation, and its adherents are constantly employed in disseminating opinions unfavorable to its reception."

The partisans of the Governor having prepared the public mind as far as their private influence would extend, now opened their battery by a series of essays promulgated through the papers of his well-drilled party. Hamilton courted a fair appeal to the public reason. In such a contest he felt assured of a triumph, and he resolved to write a brief vindication of the Constitution.

This determination gave birth to the FEDERALIST—a series of political essays published in New York over the signature of "Publius," addressed to the people of that State. The comments were originally intended to be embraced within twenty, or at most, five and twenty numbers; they extended to a series of eighty-five essays.

The first number of the Federalist was written by Hamilton in the cabin of a sloop, as he was descending

the Hudson, and was published on the twenty-seventh of October, seventeen hundred and eighty-seven. After the publication of the seventh, it was announced, "in order that the whole subject of the papers may be as soon as possible laid before the public, it is proposed to publish them four times a week." It will be remarked, as evidence of the rapidity with which they were written, that with the exception of an interval between the fourth of April and the seventeenth of June, during which period, owing in part to the pendency of the New York election, they were suspended, this purpose was fulfilled, two numbers usually appearing at an interval of three days.

Such was the pressure of Hamilton's engagements in his profession and in Congress, at this time, it not unfrequently happened, that he sat down amidst the bustle of his office to write the required paper, while the printer's boy was waiting to carry it to the press. But it is proper to be observed, that the topics treated of had most of them been the subjects of earnest consideration during the discussions of the recent convention. This narrative does not admit of an enlarged view of this great treatise on FREE GOVERNMENT—a work as enduring as its subject, addressing itself to the highest principles and interests of the human race, commanding the admiration of the statesmen and jurists of Europe and America—appealed to as an unerring commentary on the Constitution of the United States, and, though written in haste to meet the objections to its adoption, as they arose, exhibiting a fulness of thought and lucidness of argument rarely, if ever, surpassed. Its objects are stated by Hamilton in the first number: "A discussion of the utility of the UNION. The insufficiency of the confederation to preserve that Union. The necessity of a government, at least equally energetic

with the one proposed, to the attainment of this object. The conformity of the proposed Constitution to the true principles of republican government. Its analogy to the constitution of New York, and the additional security which its adoption will afford to the preservation of that species of government, to liberty, and to property."

This outline gave a wide scope, but, wide as it is, and unavoidable as was the brevity of this popular appeal, no important branch of the subject is overlooked.

Combining, in the highest degree, comprehensiveness and precision, a flood of light is poured in upon every question in discussion. Except some of the numbers from another pen,* showing some proneness to refining, page after page exhibits the deep theoretic wisdom and bold common sense that mark this work; the clearness and force with which each great principle in government is set forth, and the care with which its modifications are stated and admitted; the constant submission of theory to experience, and the remarkable truth with which its practical instructions are applied to a system so novel and so complicated. The reserve as to the probable operation and success of the new system is such as was to be anticipated from men too wise to seek to penetrate so uncertain a future, all of whom would have preferred at that time a government of real checks—of greater central vigor, duly controlled,—less dependent on its federal members, in its structure strictly republican, but more protected from the excesses of liberty.†

* A revised edition of the *Federalist* will state all the evidence which is known to exist to designate the respective contributions of the authors. From one statement, and the authentic one, it will appear that of the eighty-five essays, Hamilton wrote sixty-five.

† "As soon as the Constitution was promulgated, Hamilton came forward and placed himself in the foremost rank of its advocates, making him-

On the twenty-eighth of September, a month previous to the issue of the first of this series of papers, the report of the General Convention was submitted to Congress to be transmitted to the States. This reference to Congress was the only mode in which respect for the obligations of the confederation and to the jealousies and prejudices of the States and of the people could be preserved. But this course, though necessary and expedient, was not free from serious hazards.

The leading opponents of the Constitution in that body of thirty-three members, representing twelve States,* were Richard Henry Lee, of Virginia, and Nathan Dane, of Massachusetts.

The primary objection was, that, as the proposed Constitution, if established, would subvert the articles of confederation, from which they derived their powers, there was a constitutional unfitness in their acting upon the subject.

In reply, the resolution of Congress recommending the convention was referred to. The powers of the delegates, it was said, differed little from the powers con-

self, for all future time, one of the chief of its authoritative expounders. He was very ably assisted in the *Federalist* by Madison and Jay; but it was from him that the *Federalist* derived the weight and the power which commanded the careful attention of the country, and carried conviction to the great body of intelligent men in all parts of the Union. The extraordinary forecast with which its luminous discussions anticipated the operation of the new institutions, and its profound elucidation of their principles, gave birth to American constitutional law, which was thus placed at once above the field of arbitrary construction, and in the domain of legal truth. They made it a science; and so long as the Constitution shall exist, they will continue to be resorted to as the most important source of contemporaneous interpretation which the annals of the country afford."—*Curtis's History of the Constitution*, i. 417–419.

* Rhode Island not represented; if full, Congress would have numbered ninety-one members.

ferred upon Congress, respecting alterations; therefore, if the proposed plan was within the powers of the convention, it was also within those of Congress. If it exceeded them, the same great public necessity which induced its having been formed, should govern the latter body. From less urgent motives, they had exceeded their powers, and an omission to recommend it would have a most pernicious influence. Lee, then, moved a series of amendments in which he was supported by Melancthon Smith, a delegate from New York.

He insisted, that they had a right, and that it was their duty to insert amendments; and demanded that a division be taken on them, and that it should appear on the journals.

To obviate a measure which would prejudice the public mind, it was unanimously agreed to transmit the Constitution to the several States, without any expression of opinion.

Delaware was the first to adopt the Constitution. This colony, part of a low peninsula, lying between the Chesapeake and Delaware bays, originally settled by Swedes and Finns,* was soon after subjugated by the Dutch;† and, on the capitulation of New York, was surrendered to the English, who, with a few of the original settlers, some Huguenots and Scots, constituted its population. Its government was Proprietary, the Governor and Legislature being the creatures of the Proprietor, and its laws subject to the approval of the crown. When independent, it organized a system of three branches, the Legislative composed of two bodies. Long attached to Pennsylvania, its laws and its customs were similar. Though its weakness made it shrink from the hazards

* 1627. † 1655.

of the Revolution, yet it moved on with the general current of public opinion, and contributed its mite to the demands of the confederacy. The same weakness rendered it favorable to every proposition for a general revenue, and that the vacant territories of other States should become part of the national domain; for of revenue, it had little, and of vacant lands, almost none. Its course in the Convention was such as would be prompted by its relative position. Thus, it was the advocate of every proposition recognizing State sovereignties, favoring an equal vote by each State in both branches of the National legislature, preferring the final submission of the Constitution to the State legislatures, and opposing a direct representation of the people in any form. This same motive prompted it to favor an Executive during good behavior, probably thus to ensure a guard against changes of policy, that might affect its conceded advantages. With a population, so small, as scarcely to entitle her to a representative in the second branch of Congress, this State gladly took refuge in a form of government which forever secured to her one representative in that branch, an equal representation in the Senate, and all the equal benefits of a National system. Thus, in a convention held at Dover on the seventh of December, she unanimously and unconditionally ratified the Constitution.

Pennsylvania, though preceded by Delaware in final action, was the first to consider the new government. This great central State, lying between New York, New Jersey, Maryland, and Virginia, might be regarded as the heart of the Union. Its lofty mountains are the sources of those great streams, which, winding their devious way, fall south into bays of the Atlantic; and, on the west, pour their swollen waters into the Gulf of Mexico. This range of the Alleghanies—one hundred miles in length—

severs the State, which is also divided by parallel ridges, covering masses of then unexplored mineral wealth; and protecting successive, spacious, luxuriant intervales, waiting the labors of the husbandman.

It was first settled by the Dutch,* followed by Swedes, who capitulated to the Dutch, and these to the flag of England,† which was raised on the small peninsula between the rivers Delaware and Schuylkill, where was soon begun "Philadelphia," or the "City of Brotherly Love."

Fourteen years after the conquest, a charter for this colony was granted to William Penn, eldest son of an English Admiral, a favorite at court. Captivated by the tenets of George Fox, he became a member of the new formed "Society of Friends," derisively called "Quakers," and suffered from the persecutions of ecclesiastical tyranny, directed against a sect, which, claiming to act under the immediate inspiration of the Holy Spirit, condemned a "hireling ministry;" their support by tithes, and the use of "oaths," thus probably hoping to escape the laws against "Nonconformists."

To provide a refuge from persecution, Penn purchased the territory which bears his name; and, framing the charter he obtained, according to the most liberal model that had been granted, laid the foundations of a government, in benevolence unequalled by any other the world had seen. Hither, from the manufacturing centre of England and the ports of London and Bristol, came this grave, formal, shrewd, temperate, industrious, and humane people.

They were soon followed by Scotch, Irish, Welsh, and by Germans, who had been reached by the new doctrines, much in sympathy with those of their sectarian birth-

* 1623. † 1667. Hazard's Pennsylvania Annals.

place. To his people, prepared by their severe experience at home to assert tolerance in religion, and to combine liberty with law, Penn granted a "Frame of Government," which, while it reserved to the Proprietary the appointment of the Governor, gave to the freemen the choice of his council and of their Assembly. Ere long were passed laws abolishing primogeniture, establishing the trial by jury, providing for taxation only by law, rendering real estate subject to executions for debt, introducing a system of criminal jurisprudence protective of the rights of the accused, graduating punishment, by a mild rule, to the offence; and securing an universal toleration of religious opinions. The original "Frame of Government" was twice remodelled by its founder, in accordance with the wishes of his followers.

Under these auspices this colony rapidly grew in wealth and numbers, so rapidly that it was at one period proposed to impose a check upon immigration.

It is of the temper of the colonist, however happy his lot, to be discontented; and the charter and the government of Penn had each furnished grounds of discontent. The latter was the first to cause dissatisfaction. It left the constitution of the judiciary to the will of the Proprietor and of his successors. The "Friends" had suffered, chiefly at home, from judicial tyranny, and their Assembly framed a judicial system, which, though resisted, was established, but compulsorily, by subjecting to taxation equally with other property, that of the Proprietaries. These, with not a little justice, complained, that quit rents due to them as Lords of the fee should be taxed by the representatives of their tenants. This was a frequent and a fruitful source of discord. As the colony extended, and exterior dangers threatened, a new cause of contention arose. The "Quakers" insisted on their

exemption from military duty, and from sharing the other burdens of war; to which religious scruples, they sometimes found support in the German population, not unwilling to escape service and taxation. As the dangers became urgent, these scruples yielded; and aids were granted in terms to meet the refinements of conscience.* But these aids were in paper money, and the depreciation of this money diminished the value of the Proprietary rents. Hence a contest between the claims of the Proprietor and the necessities of the colony. The gentle policy of the Quakers towards the Indians was another subject of contention. The savage, pressed by the white man, retaliated. Mutual cruelties ensued, till the frontier population broke forth into insurrection, because of their defenceless condition; and menaced the safety of the city of Friends, not sympathizing with the Irish and German borderers, who, imitating the savage owners, held the lands they had invaded, by what was long known as "a tomahawk title."

Amid all these elementary preparations to the future strife, Pennsylvania still increased. With few slaves, for slavery was not sanctioned† until after the Revolution, its white industry found ample returns in the products of its strong soil. Of the settlers, especially the Germans, many were mechanics, most taught in the arts of supplying the home necessaries of life, made more abundant, at a later period, by the aid of the cheap labor of "Servants," or "Redemptionists," toiling to purchase their freedom from a contracted servitude. Thus, while the exports of

* The money granted was to be expended in purchase of *beef*, *wheat*, or other *grain*, intended, as is stated, to cover *gunpowder*. Gordon, 249.

† An act for "the Abolition of Slavery," drawn by William Lewis, was passed March 1st, 1780. It forbade "any relief or shelter to any absconding or runaway negro or mulatto, slave or servant."

the colony increased, the imports were relatively less. Nor was mechanic skill confined to mere necessaries. The American genius for naval architecture exerted its powers. The Delaware welcomed to its placid surface vessels in workmanship and texture nowhere excelled. The Navigation Act would have confined the Colonial commerce to British bottoms; and most of these vessels were sold to English merchants; but, though a free inter-colonial trade was interdicted by Parliament, still room was left for enterprise in a traffic with the West Indies, the Canary Islands, and a few other ports.

Thus an important mercantile community grew up; and Philadelphia became the commercial metropolis of the Colonies—the infant seat of their letters, elegance, and art—the distinguished city, whence they would declare to the world the rights and duties of Independence; and in which were held those great consultations, which guided the energies of this Republic in war, and shaped its future form and destinies.

In the preceding political controversies of this colony, the parties were classed as "the City or Governor's party," and the "Quakers or Country party," which held the predominance. When the questions which generated the Revolution had become rife, this division changed. The merchants were foremost in resistance to the new imperial laws of trade, for these restricted their bread. The industrial classes were not less alive, for England had passed statutes which affected, oppressively, every man that wore a hat, or guided a ploughshare,* or levelled a rifle. The Germans, also, hostile to English sway, were ready for revolt. The Irish popula-

* Hatters could only employ two apprentices. No slitting or rolling mills were permitted—1750.

tion had tried their courage on the frontier; had seen the discomfiture of English troops, and were not unwilling to measure their strength; and, with these, were seen to mingle, with earnest contumacy, the settlers from Connecticut, who, at Wyoming, had disputed successfully the power of the Colony, and thought they saw in an abruption from the English throne, the end of the land titles they were contesting.

But the Quakers stood aloof. They were unwilling to meet the great emergence. They would rather petition. The case, in their eyes, was not clear. Of all the charters, that of Pennsylvania alone submitted the power of imposing taxes or customs to the English PARLIAMENT.

The acts of trade were acts of Parliament; had they a right to resist, and, especially, would resistance compel them to imbrue their hands in blood? Was the time come? Sympathizing with the privations of Boston, they formed a committee of "Sufferings," bestowing liberally of their wealth; and, ultimately, yielding to the strong necessity of the day, they submitted to compromise for military service by an equivalent in money.

The transition from a government bearing allegiance to the crown, to one solely representing the popular sentiment, was, in Pennsylvania, easy. The power of the Colony had long, virtually, been in the Assembly; and it was only necessary for them to disregard the Governor, and to change the objects for which they exerted that power. Hence it was, that the leaders in intelligence, property, and station—the conservative party—preferred continuing the Charter Assembly. But, on important questions, that body was nearly balanced. Efforts to popularize it had failed. A Provincial congress was held, and a new Constitution was proclaimed and organized.

The discontents which had prevailed were not quieted by this Constitution, nor by its administration. It created a single legislative body, chosen by electors, without any property qualification; an executive council, composed of a member from each county, increasing with the number of the counties, who chose the President and Vice-President for a term of three years; and a Council of Censors, elected septennially to recommend amendments to the Constitution, and revise the intervening legislation, without power to repeal the laws. Such a contrivance alarmed the discretion of men, who desired a government of balances and checks, and were called the "Republicans." Its supporters were denominated "Constitutionalists." The former denied all obligation to the Constitution, and resolved to defeat it; the latter, sustaining it, obtained the ascendency. Bitter contentions ensued. The popular committees gained a temporary sway, persecuted the loyalists, and proscribed the lawyers, who had interposed their shield. The merchants became next the objects of hostility. A regulation of prices was introduced. An enforcement of it by arms was menaced. Riots occurred, and democracy became rank in its excesses.

The Legislature partook of the same character.

"A Divesting Act" was passed, wresting from the Proprietors of the Colony their large estates, giving an arbitrary compensation;* and violating the charter of the college, by transferring its corporate powers. The government, under whose auspices these laws were passed, was finally invested by the Legislature with dictatorial authority.† What remained of the countervailing influence of property was undermined by successive emissions

* Reed's Life of Reed, vol. ii. 166, 169.

† Ibid. 208.

of unfunded paper, attempted to be sustained by tender laws; and when the bubble had burst, the popular party directed its force against the only remaining power, that of legitimate credit.

The charter of the Bank instituted to sustain the army was repealed. New and increased exacerbations followed. The Bank charter was renewed, and in the midst of the violent political and personal commotions of this disturbed State, then the second in its population of the United States, the Federal Constitution was submitted for its adoption or rejection.

The legislature of Pennsylvania was in session at Philadelphia at the time Congress directed its submission to the people. This recommendation was communicated to the House by express the day after its approval—being that previous to its adjournment; was read in the afternoon of that day, and the call of a State Convention was adopted, with but two dissenting voices—a decision received with loud plaudits by the audience.

The opposition, surprised by the rapidity of this procedure, rallied upon the question as to the mode of appointing delegates to this convention. It was led by William Findley, an emigrant from Ireland, in early life a humble weaver, raised to importance by a secluded, ignorant, frontier population. He was supported by a few officers of the State Government, jealous of power and fearing change. Findley, whose subsequent political course is strongly marked, had been among the number of candidates for a seat in the Federal Convention. From a house consisting of sixty-three members, he received but two votes.

To prevent the action of the Legislature, sixteen of its members now withdrew. Indignant at this secession, a number of the citizens resorted to the residence of two

of the deputies, seized their persons, dragged them to the State House, and there detained them until the legislature, a quorum being thus formed, had voted upon the mode of appointing the convention.

The "SECEDERS," defeated by this summary act, addressed their constituents, alleging, as an excuse for their conduct, the departure of the Federal Convention from its proper office—a mere amendment of the confederation; the introduction of a government fraught with dangers to public liberty; the irregularity of the Legislature in acting without an official request by Congress; and the precipitancy of its proceedings. The reply of the majority asserted, that the original appointment of delegates to the Federal Convention had been made previous to the intervention of Congress; that Findley was a member of the committee which reported the act for their appointment; and that he concurred in the selection of delegates. It denied that the Convention had exceeded their powers, and alleged, that great forbearance had been shown to the "Seceders," who had "violated the first condition of all political society, which obliges the few to yield to the many." The ADDRESS of the "Seceders," although it kindled an opposition in the western part of the State, settled by foreigners, ripe for the arts of demagogues, produced little sympathy in the people at large, from the well-ascertained fact, that a meeting, chiefly of persons holding office under the State, had been convened at Philadelphia, during the sitting of the General Convention, which resolved, if the Constitution should interfere in the least with that of Pennsylvania, that it ought to be opposed, and rejected.

It was the same party, which, as stated, under the name of Constitutionalists, had repealed the charter of the Bank, and the charter of the University; had sup-

ported a Test Act, and had imposed an oath of abjuration.*

They became very active in their efforts to prejudice the public mind, but with partial success.

The Convention of Pennsylvania assembled on the twenty-first of November.

The leading opponents of the new system were Findley, then of Westmoreland, John Smilie, of Fayette, also a native of Ireland, and Whitehill, of Lancaster. Its prominent advocates were Chief Justice McKean, and James Wilson, representing Philadelphia. The latter, a native of Scotland, whose liberal spirit and masculine vigor of intellect had been often previously displayed in Congress, principally and most ably sustained it.

In this labor of patriotism were also associated, Gen. Wayne, Colonels Hartly, Pickering,† and McPherson. The report of the debates of this Convention give but one side of the argument; the views of the opposition are from other sources.

This omission is of less moment, because the large majority in favor of the Constitution being early ascertained, the minority directed their chief efforts to complicate the question by a proposed Bill of Rights, and various amendments.

The prominent objections raised against the Constitution were, that it needed such a declaration of rights, that it would annihilate the State governments, and produce a consolidated empire from the powers conferred upon it

* On the 29th of September, 1784, it is stated, that the Assembly of Pennsylvania was dissolved in consequence of a disagreement on a bill to alter the Test Act. This law is said to have excluded from the right of suffrage two-fifths of the inhabitants of the State. General Wayne was conspicuous in opposition to this arbitrary measure.

† Timothy Pickering.

of internal taxation, and of supporting a standing army in time of peace; while the rights of individuals would be subject to a National Judiciary, uncontrolled by jury trials.

Smilie deprecated the dangers of such a government, drew analogies from the imperial rule of Rome, seeing, in the distance, that the shadows of government might long be retained, when the substance was totally lost and forgotten. "Liberty and happiness," Wilson answered, "have a powerful enemy on each hand—on the one, tyranny; on the other, licentiousness. To guard against the latter, it is necessary to give the proper powers to government; and to protect against the former, those powers should be properly distributed."

Findley urged the several evils of the system; that by the preamble of the Constitution, "We, the people," and not we the States, it was a compact between individuals entering into society, and not between separate States enjoying independent power and delegating a portion of it for the common benefit; that in the Legislature each member had a vote, while in the confederation the vote was by States; that the general power of taxation would absorb the particular powers; that Congress possessed the power of judging of elections; that the Judiciary power was co-extensive with the Legislative; that the payment of the national legislature was to be from the national treasury; and that an oath of allegiance to the Constitution was required.

The answer to these objections involved a full examination of the Constitution. It was made by Wilson. His reply to the first objection on the great question of the nature and source of the government, has much force. "I confess, I am much surprised to see, that the great leading principle of this system is so very much misunderstood. It is said, 'The convention no doubt thought they

were forming a Contract!' I cannot answer for what every member thought, but I believe it cannot be said, that they thought they were making a contract, because I cannot discover the least trace of a compact in that system. There can be no compact unless there are more parties than one. I know no bargains that were made there. I am unable to conceive who the parties could be. The State Governments make a bargain with one another! That is the doctrine that is endeavored to be established by gentlemen, in opposition. Their State Sovereignties wish to be represented. But, *far other* were the ideas of the Convention, and *far other* are those conveyed in the system itself. This is not a Government founded upon Compact. It is founded upon the power of the people. They express in their name and their authority—'We, the people, ordain and establish.' From their ratification alone, it is to take its constitutional authority; without that, it is no more than tabula rasa.

"These expressions declare, in a practical manner, the principle of the Constitution. It is 'ordained and established' by the people themselves; and we, who give our votes for it, are merely the proxies of our Constituents. We sign it, as their attorneys; and, as to ourselves, we agree to it as Individuals."

His argument for the power of Internal Taxation was founded on the necessity of such a power to attain the objects of the Government. That it was a consolidated Government was denied, because on the State Governments its organization rested; and the allegation that it transferred to the General Government the State Sovereignties, was met by the assertion of the principle, that the Sovereignty is not in the possession of the Governments, it is in the people. "The truth is," he remarked, "that in our governments, the supreme, absolute, and un-

controllable power, *remains* in the people. As our Constitutions are superior to our legislatures, so the people are superior to our Constitutions.

"The people may change the Constitutions whenever and however they please. This is a right of which no positive institution can ever deprive them."

Thus it is seen here, as it may be in the proceedings of the Convention of every other great State of this Union, that the much calumniated 'Federalists' were always the first to recognize, the boldest to assert, the most scrupulous in regarding the people of the United States as the source of political power.

The observations of Wilson extended to a large review of the new system of government, its principles, and the distribution of its powers, their extent and checks; marking, with nice discrimination, the differences between it and pre-existing confederacies.

Smilie replied, insisting upon the necessity of a Bill of Rights as a standard by which to measure the powers of the Government, and demanded of its advocates an adequate reason for omitting an instrument, "so essential to a perfect form of Government." McKean answered, that Bills of Rights were of modern invention, inapplicable to institutions, where the whole sovereignty was in the people, as an inherent right, and that they were only useful to limit a Government established on the principle, "that the supreme power is lodged in the King."

After frequent debate, memorials, which had been circulated extensively, were presented, urging an adjournment of the State Convention to a future day, to ascertain the proceedings of other States. As the ground of this motion, fifteen amendatory articles * were sub-

* The seventh and eighth of these were intended to create the impression, by insisting upon the right, that the Constitution would give the power of

mitted, which were supported by Smilie, but were rejected by a large vote. Wilson declared, "that the evident operation of this proposition would be, to exclude the people from the Government, and to prevent the adoption of this or any other plan of Confederation; that he was happy it should appear on the journal, as an evidence of the motives that prevailed with those who framed and supported it, and that its merited rejection would permanently announce the sentiments of the majority respecting so odious an attempt."

The final vote of unconditional ratification was taken on the twelfth of December, when there appeared forty-six members in favor, twenty-three against it. The opponents were urged by Colonel Hartly to sign it, as an acquiescence to the principle, that the majority should govern. Smilie replied, "that he would never allow his hand, in so gross a manner, to give the lie to his heart and tongue."

prohibiting *hunting* and *fishing* by the proprietors on their own property; another excluded the imposition of internal and direct taxes.

CHAPTER L.

The day prior to the ratification by Pennsylvania, the Convention of New Jersey assembled. Her previous course left no doubt as to the policy of this State.

From the commencement of her Colonial existence to its end, it had been a scene of frequent discord. Though with a large maritime front and a various surface, her natural advantages were not great. From Shrewsbury to Cape May there is not a single harbor of any value. The low level of the southern portion is a pine barren. On the west, inhabited by Quakers, the soil is good. The residue of the State, where Dutch and Swedes and Scotch toiled, with some exceptions, is hilly and rugged. The people were poor. The earliest charter had secured religious freedom and the power of imposing taxes to an Assembly, chosen by the freemen; but the Government was Proprietary, and unhappily the grant was to different Proprietors. Thus, the Colony was early divided. Beside the questions which had disturbed the other Colonies—of grants of revenue, requisitions of militia, paper emissions, the duration of their Assemblies—controversies had arisen as to the titles of the lands, which the surrender of the Government to the Crown did not quiet. The Proprietary titles were retained; and, of the population, many regarded them with jealousy. Attempts to enforce

these titles were resisted, and the resistance was countenanced by the popular branch of the Legislature. It was amidst all the excitement of such controversies, that the Revolution opened. The successive measures of opposition were entered into warmly. The Royal Governor of the Colony was denounced—seized as an enemy, and held a prisoner in Connecticut, until the close of the contest. A new Government was organized before the Declaration of Independence, and its powers were steadily exerted until independence was attained.

But New Jersey, with little to spare, felt grievously the severities of the War, increased by the impotence of the Confederation; and is seen among the earliest and most urgent advocates of its invigoration.

Although her proposed form of Government had not obtained in the Federal Convention, she had gained much in the modification of the Virginia plan. The narrow policy of New York was not unwelcome to her, for it served the supposed interests of a small State. The larger scope of Pennsylvania she would disapprove, as reducing her relative importance. But with neither State had she any strong political affinities. Both, from their superior power and superior advantages, would be, at first view, objects of jealousy. The mind of the State had, from this very jealousy, and, also under wise and happy influences, been long preparing for a change of system; and, when the Constitution was presented for her adoption, the Convention, after a session of four days, adopted it on the twelfth of December, unconditionally, and without a dissenting voice.

Though Georgia had withheld from Congress the power of levying an impost, and, from jealousy of Eastern influence, had opposed the admission of Vermont into the Union, thus showing Anti-National tendencies, yet

there could be little doubt she would accept the Constitution.

With an area twice that of her neighbor, South Carolina, she had only one-third of the population, who were chiefly engaged in planting the rich lands upon the coast, and on the Savannah, where the first settlement had been made by the English, a century later * than most of the other Colonies.

Her earliest Government was an incorporation of Trustees, who—as a principal object of the colonization was to erect a barrier to Carolina against aggressions from Florida and Louisiana—granted the lands to settlers to be held as military fiefs, revertible. Further, to prevent the weakness incident to their introduction, these Trustees expressly forbade the importation of slaves.

So uncertain a tenure of property could not long endure in any of the North American Colonies. The restriction as to slavery delayed the culture of crops suitable to the soil and climate. The cost of the settlement had been large—the returns small; and, at the expiration of twenty years, the charter was surrendered, and a royal government was established. During this period a number of Scotch Highlanders were settled at Darien. A body of Germans also found their way here, and a few French. The principal change which took place in its condition was the introduction of slaves. Though wealth increased, her white population continued small. Her great resources were not developed. Spanish possessions of no friendly temper, were her Southern neighbors. Dense tangled forests covered her large interior, occupied by numerous tribes of warlike Indians, against whose menacing ravages the inhabitants of Savannah were engaged in throwing up defences after the Federal Conven-

* 1732.

tion had closed its labors. A sense of weakness and impending dangers overruled all local or sectional jealousies, and, eager to place herself under the shield of an efficient general government, on the second of January, Georgia, by a unanimous vote, adopted the Constitution.

Connecticut was next. The most southern of the New England Colonies, divided by three nearly parallel streams, retaining their descriptive Indian appellations, from the largest of which, the CONNECTICUT, it is known, shows in the names and the number of its towns its origin and its policy.

These towns all bear English names, and were settled by emigrants from three contiguous south-western counties of England, soon after the first colonization of Massachusetts.

Dissenters from the Church of the mother country, they came hither in separate bodies, each with its minister at its head, and planted themselves in separate communities, at not remote points—forming at first two Colonies, those of Connecticut and New Haven, which, after a third of a century, were united in one. The lands of the former were held under a patent from the crown; those of New Haven were purchased directly from the Indians. Both enjoyed, except for an inconsiderable time, a government chosen by themselves, composed of a Governor and his council, and of an assembly which met twice a year, all elected annually by the ballots of the admitted freemen of each town, no person being eligible more than once in two years. The Constitution of the New Haven colony restricted the choice to Church members—the government and its laws being founded on Scripture rules. One of the first acts of its earliest assembly was, the incorporation of towns; each empowered to elect a court for its own government in lesser matters, with a

moderator, and each carefully guarded as to its bounds and powers by a distinct, recorded demarcation.

These towns were soon divided into small, nearly equal, farms. No disputes of title disturbed their peace. Save the double portion to the eldest, these farms descended equally among the males; and these two United Colonies, under one charter, subsequently obtained, of largest franchises, exhibited a community in all its ordinances, carrying the system of self-government to the utmost extent consistent with a system of laws. But over this political equality one influence was powerful and dominant, nor was it reluctant to exert its power or to extend its control,—the influence of the clergy. Thus a College was founded, but it was under the control of the ministry, each of whom was elected by the inhabitants of his town, being Church members, whose duty it was, in the several precincts, to make "warning" visits of inquiry. Four years after, a small Episcopal church was founded at Stratford; and four years more were only permitted to elapse, when the Legislature passed an act requiring the dissenting churches to form an ecclesiastical Constitution for the "Association of Ministers" and the "Consociation of Churches." "Visible Saints" were pronounced the only fit members, and confederation the only form of a "Visible Church." A "Confession of Faith" was adopted, and "Heads of Agreement" were entered into, called the "Saybrook Platform;" and all Churches agreeing in it, were declared established by law.*

As a natural and necessary consequence, divisions of opinion, violent and extreme, arose. "Separatists" were seen in large numbers, burning their religious books and their ornaments, which they called their "idols," and sol-

* Other churches were nevertheless permitted—1708.

emnly charging each other not to premeditate, but "to speak as the Spirit should give utterance."

Under such a notion, laymen became preachers, until prohibited by law. This law being repealed, the "Separatists" died out, and the legal clergy supported by rates, and having education in their hands, as masters of the schools, also supported by rates, resumed their sway.

The legislation as to morals assumed a stern cast.

The scripture measure of crime and punishment, intended to govern and preserve a "peculiar people" in the midst of heathens, was adopted in this modern society. Blasphemy was punished with death, and branding, whipping, and wearing the halter, were the penalties of offences, for most of which a milder policy leaves the reparation to civil justice.

Under a rule so rigid, dissent, whispering toleration, would pass into disbelief; morality would be weakened by sneers; and the sense of right would fade into that of expedience.

These were the errors of a small colony, possessing little, for much was beyond their reach, with leisure for speculative inquiries, to whom large interests, with the large attendant ideas, were not present.

Without any valuable fisheries along its extensive coast, its exports were limited to the productions of their not extensive forests, to a few cereals and surplus provisions carried to the neighboring provinces and to the West Indies, chiefly in the form of barter. In no other colony was individual economy more necessary or more general. The wants of the Colonial government were few, while the town rates, levied without discrimination of persons, even assuming the form of an income tax,*

* Traders, tradesmen, and artificers were to be rated according to their "gains and returns."

met the chief demands; and were supplied by an impost duty on importers, not being inhabitants, "either by water or *land carriage*." When the English restrictive laws were promulgated in Connecticut, opposition was more a matter of theory, than of interest, a fear of future rather than a sense of present injury.

Sympathizing with her sister colonies, she rejected the menaced tyranny of a government, to her always essentially foreign; and, when the Revolution was begun, contributed freely of what she had. In the previous contests, this colony had furnished double her contingent of troops, and during the war of the Revolution similar efforts are seen. As consequences, labor was withdrawn; her fields were untilled; and her small commerce was cut off by a frequent blockade. Too cautious to indulge largely in paper emissions, and too equitable to enforce a rigid tender law, she escaped, in a degree, the injuries of a broken credit.

But when Independence was secured, she felt all its present evils, few of its benefits. With the West Indies, her Commerce was curtailed. With the other States, it was a conflict of interest leading to a countervailing policy. Vain were her efforts, by bounties and privileges, to draw to herself, that capital, which, elsewhere, found better returns, or to encourage manufactures, the value of which time only could develop.

Her industrial interests had early conferred on Congress the power of raising a general revenue to discharge debts of which she was a creditor, and her intelligence saw the importance of a more efficient Union. But the strictness of her political opinions, shown in all the limitations of her own institutions, recoiled at the idea of a National Government, with enlarged powers. Appeased by the concessions to the claimed Sovereignty of the

smaller States, her prejudices, in part, gave way, and the jealousy of a central power was met by her jealousy of her neighbor States. Her remnant of bigotry was also checked by the advancing opinions of the world. Thus, the question of the adoption of the Constitution was a struggle between her fears and her wants—between narrow antecedents and prospective wisdom.

It was after a long debate, closed only by the shadows of approaching night, in which the advocacy of the Constitution devolved upon a youth,* who addressed the Legislature from the pulpit stairs, that Connecticut resolved to appoint delegates to the Federal Convention, the calling of which she had earnestly opposed.

To decide upon its great act, the State Convention met on the third of January, the day after Georgia had approved it. The following day, after an oppressive pause, Oliver Ellsworth's tall, slender form was seen rising before the anxious inquiring auditory, assembled, as was the custom, in a place of worship. His dark complexion and solemn countenance seemed clouded with the careworn apprehensions of a deep-thinking man; while in full, earnest, but not melodious tones, he began the work of conviction. His observations chiefly turned upon the importance of Union to the National defence—to economy—to internal Peace and to the preservation of commutative Justice.

On each of these heads, he descanted in his marked didactic manner, adding illustrations from various history. His remarks on the last topic are indicative of the feelings of his State:

"If we are divided," he asked, "what is to hinder the large States from oppressing the small? What is to defend us from the ambition and rapacity of New York,

* A son of William Johnson.

when she has spread over that vast territory which she claims and holds? Do we not already see in her the seeds of an overbearing ambition? On our other side, there is a large and powerful State. Have we not already begun to be tributaries? If we do not improve the present critical time, if we do not unite, shall we not be like Issachar of old, a strong ass crouching between two burdens? New Jersey and Delaware have seen this, and have adopted the Constitution, unanimously."

He then proceeded to show the necessity of an energetic system, from the example of other nations, and from the unequal burdens borne by that State; from the disregard of Treaties and the condition of the Foreign Debt; as consequences of which, Britain held the northern Posts, and Spain occluded the Mississippi. The next step, he said, would be reprisals—then war.

"If a war breaks out, (and our situation invites our enemies to make war,) how are we to defend ourselves? Has government the means to enlist a man, or buy an ox? or shall we rally the remainder of our old army? The European nations, I believe to be not friendly to us. They were pleased to see us disconnected with Great Britain. They are pleased to see us disunited among ourselves. If we continue so, how easy it is for them to canton us out among them, as they did the kingdom of Poland. But, supposing this is not done, if we suffer the Union to expire, the least that may be expected is, that the European Powers will form alliances, some with one state, and some with another; and thus involve us in all the labyrinths of European politics. But I do not wish to continue the painful recital. Enough has been said to show, that a power in the general government to enforce the decrees of the Union is absolutely necessary."

Johnson followed; and with a flexile countenance,

full of feeling and benevolence, in deep, subdued, impassioned tones, with classic elegance, depicted to a people, long witnesses of his virtues, his wisdom, and his genius, the melancholy situation of the country. He dwelt much upon the defective system of the Confederation, as leading to transgressions by the States, to the enforcement of the general laws by arms, to civil war, to foreign subjugation. To avoid these evils, the Convention, he said, "have gone upon entirely new ground. They have formed one new nation out of the individual States. The Constitution vests in the general legislature a power to make laws in matters of national concern—to appoint officers to carry them into execution. This excludes the idea of an armed force. The power which is to enforce these laws is to be a legal power, vested in proper magistrates. The force which is to be employed, is the energy of Law, and this force is to operate only upon individuals who fail in their duty to their country. This is the peculiar glory of the Constitution, that it depends upon the mild and equal energy of the magistracy for the execution of the laws. . . . . Though no enthusiast, I cannot but impute it to a signal intervention of Divine providence, that a Convention from States, differing in circumstances, interests, and manners, should be united in adopting one general system. If we reject a plan of government which, with such favorable circumstances, is offered for our acceptance, I fear our national existence must come to a final end."

The debate of the ensuing day was upon the powers of the Constitution—more particularly those relating to the revenue. These were defended with ability. The provisions which conferred upon the general government a control of the impost, and which left the other powers of taxation concurrent in the National and State govern-

ments, were vindicated. The objection, that a national impost would operate in favor of the planting States, was repelled. The repartition of power was defended on the ground, that in the judiciary, a constitutional check was provided to correct the divergence of either government from its proper sphere; that, if the States would contend, no constitutional provisions could prevent it; that the choice was between "a coercion of law and a coercion of arms." "How," Ellsworth inquired, "have the morals of the people been depraved for the want of an efficient government, which might establish justice and righteousness. For the want of this, iniquity has come in upon us like an overflowing flood. If we wish to prevent this alarming evil—if we wish to protect the good citizen in his right—we must lift up the Standard of Justice; we must establish a National government, to be enforced by the equal decisions of law, and the peaceable arm of the magistrate."

An earnest discussion of several days ensued, in which Roger Sherman, Huntington, and Oliver Wolcott were also conspicuous. "The great council of the nation," Huntington remarked, "must have a controlling power with respect to national concerns. There is at present an extreme want of power in the national government; and it is my opinion that this Constitution does not give too much. The State governments will not be endangered by the powers vested by this Constitution in the general government." "It is founded," Wolcott observed, "upon the election of the people. This is all the security in favor of liberty that can be expected,—the necessary consent of the people; to depart from the present system, or to modify the new one. It effectually secures the States in their several rights. It must secure them for its own sake, for they are the pillars which uphold the

general system. The Senate will secure the rights of the States, the other branch the rights of the people. He utterly condemned the imposition of a test.

The Constitution was ratified on the 14th of January, by a vote of one hundred and twenty-eight to forty members. No report of the speeches of the opposition has been found, hence there are no means of stating the precise grounds taken by it. The character of the defence shows that jealousy of power was the prominent topic, which was aided by an appeal to the feelings of a religious people, that the Constitution excluded a religious test.

While the course of events was thus far propitious, five States having adopted the Constitution, the friends of the Union looked with intense anxiety to the vote of Massachusetts. The lead she had taken in the general politics of the country, her influence with New Hampshire, her population, her talent, and her wealth, all rendered her adoption of the Constitution, of primary importance.

The origin and progress of this colony had given to its inhabitants a marked character. Settled in sixteen hundred and twenty, by emigrants from the western counties of England, this homogeneous population, flying from religious persecution, took refuge in the Netherlands. There, small in numbers, and almost without resources, among a strange people, speaking an unknown tongue, and with every avenue to wealth filled by an active and prosperous community, they sojourned for a time. In exile, and with little hope, they saw that the riches which surrounded them had grown with the growth of the fisheries. The tidings that had reached them were fast confirmed by reports of the abundance of fish found on the coasts of America. The trading world was all alive, and the greater part of the Pilgrims, moved by

the prevailing impulse,* resolved to seek fortune and religious independence on the shores of this far distant continent. The consent of the English monarch was obtained, and hither came the progenitors of the chief colony of New England.

"Fishing places" were occupied, with block-houses in the rear, to protect them from the Indians; and villages arose, amid famine and disaster, along the margin of the sea. All the institutions of these nascent communities, manifested the spirit and the influences which begat them. Nature, in her severity, co-operated. For nearly half a century, the interior remained a forbidding wilderness. When penetrated, the uneven surface of a rugged soil, parted by successive hills, sometimes rising into mountains—swept by the churlish winds of an austere climate, compelled a toilsome industry, confined to limited possessions, and rewarded with limited returns; still prompting enterprise to look beyond the land for labors and for harvests.

These little settlements, early made compact by a sense of insecurity, each found, in its ecclesiastical polity, an effective bond,—the erection of *independent* churches, around which they clustered with fond attraction.

Towns then sprang up—each complete in its municipal organization; each, the source of political power; and each, in its town meeting, expressing the direct popular opinion†—all of equal political rank—all represented in a General Court or Assembly, with this only difference, that the representation of each, beyond the lowest limit,

* Report on the Fisheries, by Lorenzo Sabine, 1852.

† The potency of these town meetings is shown by the act of Parliament (1774) for the better regulating the province of Massachusetts Bay, providing that *no special meeting* of the towns be held *without the consent* of the *Governor*, who was appointed by the Crown.

was in the ratio of its numbers. These representatives, though annually chosen by freemen, were subject to the instructions of their constituency—a right subsequently expressly reserved, and sanctioned by the State Constitution. By this Assembly were chosen, the Assistants, the Governor, and his Deputy. A representative government was thus organized—rising little above a pure democracy, dependent for its success on the temper of a people doomed to become intensely democratic.

Its laws were such as would express and maintain their equal condition. To fit them for the Sovereignty they were to exercise, education was not merely provided for, but compelled* to the indwellers of the humblest abodes. Justice, in its simplest form, was brought to every door. "Bond, slavery, villeinage, and captivity," were excluded, "except of lawful captives in just wars." "The heinous crime of man-stealing" was denounced and prohibited.† This equality was secured by the abrogation, in the infancy of the Province, of the English rule of primogeniture, subjecting the distribution of intestate estates, in part, to the equity of Courts; but securing, beyond a double portion to the eldest son, an equal share to every male.‡ The aggregation of land in large masses was thereby legally precluded, and a sure basis laid for republican institutions. Their defence was intrusted to a military array—enforced by law, of all those able to serve—this militia choosing their own officers; trained to prompt obedience on quick emergencies; sometimes calling themselves the "*Minute Men*" of Massachusetts. All the necessities of their social condition were met with the least surrender of individual rights, and a people grew up—strenuous and resolute—acute and self-confident—

* Colonial act of 1671. † Colonial acts of 1646–1670. ‡ 1641.

full of resource—averse to control—jealous of power—born to empire.

On their character the ecclesiastical polity also exerted an important influence. Their separate and Independent Churches were claimed to be the only true method, in conformity with the primitive system of Gospel Government—rejecting Church tyranny and State intrusion—upholding the fear of God above the fear of man. To insure this Church independence, the political right of suffrage was early confined to Church members,* obliged to support their clergy by town rates,† and protected from all taint of opinion by laws subjecting the heretic to banishment or death. Thus was denied, that freedom of conscience, to enjoy which, had, in part, brought the Puritans, amid storm and tempest, over unknown seas, from their far, pleasant homes. Nor was this all. By a people who felt in their superior enlightenment their chiefest strength, the dangers of false opinion were prevented by a restriction, that no printing be done, and no press established, but with the permission of legal approvers,‡ and this nearly at the time when "the profits of the fisheries were granted to found a free school."

These things show the dominant influence, for from the political representation, the "Minister" was not excluded. He was not merely the spiritual guide, but the counsellor in all their counsels. At the town meetings, his voice was heard. In the General Court, his voice was heard; the more potent, as he could denounce whom he did not persuade. Rarely seen on the battle-field, but always encouraging resistance to oppression, and boldly vindicating the policy he advised—not the less jealous of power because his own was almost absolute—nor less awake to its

* 1631. † 1654. ‡ 1662.

aggressions, as he was an intelligent partner in the interests he defended.* In such a state of things it would not surprise, if a sense of superiority—some exclusiveness—some narrowness were among the traits of this young commonwealth, laced too tightly by the bands of a zeal, always at work, often fanatical. The substitution of a royal government, under which the Governor and Lieutenant Governor were appointed by the Crown, only gave strength to the popular sentiment of this Colony, in presenting to it an object of distrust. The vigilance of liberty, ever awake in her interior policy, was the more shown when she was called to act in a larger sphere. Common dangers usually demand common exertions and common sacrifices—and of all the exertions of courage or of endurance, and of all the sacrifices of blood or treasure, none could have been more prodigal, in every instance, than were the inhabitants of Massachusetts Bay. But as to imparting essential power, or admitting external control, none could have been more fastidious. In every association of the New England Colonies for mutual defence and quiet, this was seen. Authority to counsel—to deliberate—to propose—was freely given; but the power of execution was always carefully reserved. And so it was amidst all the arduous struggles—the menacing perils—the urgent responsibilities, and the immense objects of the American Revolution. The Articles of Confederation were essentially the production of Massachusetts—at least, from her proceeded most of the restrictive provisions it was a principal object of the Federal Constitution to remove. To sustain, in full force, the

* William Blackstone, the first inhabitant of Shawmut (now Boston), being solicited to remain and unite with the early Colony, is related to have replied: "I came from England, because I did not like the *Lord Bishops*, but I cannot join with you, because I would not be under the *Lord Brethren*."

Sovereignty of the State, had been preferred as their peculiar merit by the authors of those restrictions. The Congress of the United States had been, by many of them, regarded as a foreign government—to be endured, not cherished; and every effort to invigorate it had been charged with the intention, open or occult, to sap the foundations of liberty. With these incentives to opposition were mingled the hostility of the favorers of paper money and tender laws—that of the recent insurgent followers of the ignorant and illiterate Shays, seeking an extinction of debts; and the inclinations of the occupants of Maine, a hardy border population, many of them, without pretence of title, looking anxiously to the organization of that Province, as an Independent State.

With political thus were united personal motives to oppose a Constitution, whose office it was, to limit and subordinate the powers of the States; to refine and prolong the existence of the representative bodies; to raise the Government above the first influences of popular feeling; to combine vigor with deliberation, stability with energy; to enforce justice; and to assert and maintain the rights of this young American Nation among the elder nations of the world. Of the party especially wedded to State influence, the more conspicuous members were John Hancock, Samuel Adams, and Elbridge Gerry —sustained by Bishop, Nasson, Taylor, and Widgery, almost forgotten names. As a counterpoise to these strong influences, were the strong attachment to the Union, of a people, who had been most instrumental in establishing it; a wise sense of the necessity of an efficient General Government, whether to preserve the ascendency of the law and to insure internal quiet, or to protect and develop the great sources of their wealth, and to elevate and uphold the National dignity and honor, chief objects

of that love of Country, which, proceeding from, enlarges and purifies local affections.

The individuals, who were actuated by these noble motives, were the friends of the Constitution. At their head, was a highly intelligent mercantile class, supported by all that was dignified, and virtuous, and learned in the profession of the Law; by the great body of the clergy; by Generals Lincoln, Brooks, and most of the officers of the Massachusetts line. The enlightened, persevering exertions of Governor Bowdoin were aided by men of whom he was justly proud, as coadjutors—by the practical and enlarged, prospective wisdom of CABOT; the unerring sagacity of HIGGINSON; the vigorous intellect of PARSONS; the determined will and strong common sense of SEDGWICK; the acute and cultivated mind of GORE; the fervid superior genius of FISHER AMES.

It has been seen, that the question of a Convention, had been the source of much difference of opinion in the Legislature of this State; that it had only been assented to, when recommended by Congress; and, after the manifestation of a determined purpose, in the most distinguished men of the country, to reorganize the Government.

Of the five delegates appointed to the General Convention, Dana did not take his seat. Gorham, King, and Strong, sacrificing, in the organization of the Senate, what they justly deemed the due influence of their State, signed the Constitution. Gerry refused his assent, "declaring that he should consider himself a traitor to his country, if he did not oppose the system there, and also when he left the Convention."* He addressed a letter to the General Court of his State, assigning his objections, which

* Defence of Mr. Gerry, by Luther Martin, in Maryland Gazette, of January 13th, 1788. New York Journal, February 6th, 1788

extended to the legislative, executive, and judicial departments—to the Treaty-making power—to the want of a bill of Rights; alleging, that the Convention had exceeded their powers; and urging *previous* amendments, on the ground that the effect of the plan would be to merge the Federal and State Governments in a National Constitution. This letter was written from New York; was submitted to the Legislature of Massachusetts, a few days before it decided to call a State Convention; and was read by the people with avidity. To render its rejection certain, it was proposed in the Legislature, that the Constitution should be considered in Town meetings—a proposition founded upon the allegation, that their poverty prevented their sending delegates to a State Convention—and only defeated by a resolution to pay them from the Treasury of the State. The elections for delegates to this Convention were conducted with great warmth, many of the members were chosen under instructions to reject the Constitution. Two-thirds were, at one period, believed to be hostile to its adoption.

Amid these unpropitious circumstances, the State Convention met at Boston, on the ninth of January. Hancock was chosen President, Cushing, Vice President. At the inception of their proceedings, indications were given of the determined temper of the opposition. The resolve, under which the delegates to the General Convention were appointed, was read, thus bringing before the House the question of their powers. Gerry was, in the next place, by a large vote, though not a member, invited to a seat in the Convention, to answer such questions of facts as might be submitted to him. The mode of proceeding, it was early seen, would have an important bearing on the result. The opponents of the new system had resolved to embarrass the deliberations of each State

by the suggestion of previous amendments. This scheme originated in New York, and was zealously defended by its press. The advocates of the Constitution resolved, if possible, to defeat this policy; and succeeded in a motion, by Caleb Strong, to discuss it by paragraphs, intending to defer a division of the House, until a majority could be ascertained.

The debate commenced with an inquiry by Samuel Adams, whose previous course, and present reserve, justified apprehensions of his hostility, why the alteration of elections in the choice of Representatives to Congress, from annual to biennial, was proposed? The reduction of the Congressional term to two years had been a compromise with the prejudices of the Eastern States. Notwithstanding this circumstance was disclosed to the Convention, the opponents of the Constitution deemed the biennial duration a strong ground of appeal to State feelings, and directed all their efforts to preoccupy the popular prejudices.

They seem to have been unmindful of the important fact, that while, both in Great Britain and in America, the extent of the legislative term could hitherto be enlarged or abridged by law, the biennial existence of Congress was fixed by the Constitution. Sedgwick first took the floor in behalf of the new system, exhibiting the ardent determination of his character, denying earnestly the allegations of the opposition. After many desultory observations by the adverse party, Fisher Ames arose, and, having commented upon the distinctions between a pure and a representative democracy, and upon the different objects of National and State legislation, observed, "Biennial elections appear to me an essential security to Liberty. These are my reasons: Faction and enthusiasm are the instruments by which popular governments are

destroyed. We need not talk of the power of an aristocracy. The people, when they lose their liberties, are cheated out of them. They nourish factions in their bosoms, which will subsist so long as amusing their honest credulity shall be the means of acquiring power.

"A democracy is a volcano, which conceals the fiery materials of its own destruction. These will produce an eruption, and carry desolation in their way. The people always mean right, and if time is allowed for reflection and information, they will do right. I would not have the first wish, the momentary impulse of the public mind, become law; for it is not always the sense of the people, with whom, I admit, all power resides. On great questions, we first hear the loud clamors of passion, artifice, and faction. I consider biennial elections as a security that the sober, second thought of the people shall be law. There is a calm review of public transactions, which is made by the citizens who have families and children, the pledges of their fidelity. To provide for popular liberty, we must take care that measures shall not be adopted without due deliberation. The member chosen for two years will feel some independence in his seat. The factions of the day will expire before the end of his term.

"The people will be proportionably attentive to the merits of a candidate. Two years will afford opportunity to the member to deserve well of them; and they will require evidence that he has done it. But the representatives are the grand inquisition of the Union. They are, by impeachment, to bring great offenders to justice. One year will not suffice to detect guilt, and to pursue it to conviction. Therefore they will escape. The balance of the two branches will be destroyed, and the people be oppressed with impunity. The Senators will represent the sovereignty of the States. The Representatives are

to represent the people. The officers ought to bear some proportion in point of importance. This will be impossible, if they are chosen for one year only.

"Will the people blind the eyes of their own watchmen? Will they bind the hands which are to hold the sword for their defence? Will they impair their own power, by an unreasonable jealousy of themselves?"

The advocates of annual elections urged in their defence, the greater dependence on the people,—"that annual elections had been the practice of the State since its settlement; that they had been considered as the safeguard of their liberties: and the annihilation of them was the avenue through which Tyranny will enter. By the articles of Confederation, annual elections are provided for, though we have additional securities in a right to recall any or all of our members of Congress, and a provision for rotation. In the proposed Constitution, we have no right to recall our delegates." These objections were combated by Bowdoin, Brooks, Gore, and King.

The latter, after reviewing the imperfect representation of other countries, from the experience of which, he said, history could afford little or no instruction, observed that the question must be determined upon its own principles. "It seems proper, that the Representative should be in office time enough to acquire that information which is necessary to form a right judgment, but that the time should not be so long as to remove from his mind the powerful check upon his conduct, that arises from the frequency of elections, whereby the people are enabled to remove an unfaithful representative, or to continue a faithful one.

"If the question is examined by this standard, perhaps it will appear, that an election for two years is short enough for a Representative in Congress. If one year

is necessary for a Representative to be useful in the State Legislature, where the objects of his deliberations are local, and within his constant observation, two years do not appear too long, where the objects of deliberation are not confined to one State, but extend to Thirteen States; where the complicated interests of United America are mingled with those of foreign nations, and where the great duties of National Sovereignty will require his constant attention." He closed with a denial of the assertion, that Massachusetts had evinced a uniform predilection for annual elections, she having instructed her Commissioners, under the New England Confederacy, to propose an extension of their term from one to three years. As to a suggestion of the expediency of a qualification of *property* in a Representative, he remarked, that, "he never knew that property was an index to abilities. We often see men, who, though destitute of property, are superior in knowledge and rectitude. The men who have most injured the country have most commonly been rich men."* "Those," he repeated, "who have ruined the liberties of their country have been generally rich." Nor did he approve of a disqualification of age; life depending in a great measure on climate. He vindicated the provision which included three-fifths of the slaves in fixing the ratio of representation.

The next question, in discussion, was, the conferring upon Congress the power of regulating the time of electing the House of Representatives.

This had been a theme of much declamation. The

* The few letters of King to Madison, of this period, are of interest. He wrote January 20th, 1788, "An apprehension that the liberties of the people are in danger, and a distrust of men of property, or education, have a more powerful effect on the minds of our opponents than any specific objections against the Constitution."

objections were met by Strong, sustained by a few concise observations from Cabot, of Beverly. George Cabot was one of those rare men, who, without ambition, without effort, almost without the consciousness of admitted superiority, control, and become the oracles of communities—whose motives are never asked, and, whose opinions, when they are themselves withdrawn, exert a lasting traditionary influence—who shine with a light so bland and pure, that every mind on which it falls seems content to reflect its excellent virtue. "I am," said Cabot, "*one of the people.* Such I shall continue, and with their feelings I hold, that the *right* of electing persons to represent the *people* in the Federal Government, is an important and sacred right. I confess, that I prize this section as highly as any in the Constitution; because I consider the *democratic* branch of the National Government, the branch chosen immediately by the people, as intended to be a *check* on the Federal branch, which latter is not an immediate representation of the people of America, and is not chosen by them; but is a representation of the Sovereignty of the individual States, delegated by the several State Legislatures. If the State Legislatures are suffered to regulate, conclusively, the elections of the democratic branch, they may, by such an interference, first weaken, and, at last, destroy that check—they may at first diminish, and finally annihilate that control of the General Government, which the people ought always to have through their immediate Representatives. As one of the *people*, therefore, I repeat, that, in my mind, the fourth section is to be as highly prized as any in the Constitution." These views were sustained, and enlarged upon, with masterly vigor, by Chief Justice Parsons. The question as to the inclusion of blacks in the ratio of representatives, a topic, since, of great interest, was next

discussed. But the feature, in the structure of the Government, most objected to, was the duration of the Senate. The argument which made most impression, was, that this would produce a consolidation of the States. Ames defended it. "The State Governments," he observed, "are essential parts of the system, and the defence of this article is drawn from its tendency to their preservation. The Senators represent the Sovereignty of the States; in the other house, Individuals are represented. They are in the quality of Ambassadors of the States, and it will not be denied, some permanency in their office is necessary to a discharge of their duty. If chosen annually, how could they perform their trust? If thus brought more immediately under the influence of the people, they will represent the Legislatures less. If chosen by the people, at large, they would represent not the Legislatures, but the people. This would totally obliterate the Federal features of the Constitution. A consolidation of the States would ensue, for who would defend them against the encroachments of the Federal Government? The State Governments are the safeguard and ornament of the Constitution. They will protract the period of our liberties. They will afford a shelter against the abuse of power, and will be the natural avengers of our violated rights. The retirement, every two years, of a third part of the Senate, is an effectual check. It will admonish of the responsibility to the State Legislatures. It will infuse, periodically, the sentiments of the States. The Government will then be in practice, as in theory, a Federal Republic."

King remarked: As the Senate preserved the equality of the States, their appointment is equal. To the objection, that it was to be chosen for too long a period, he observed: "If the principle of classing them is con-

sidered, although it appears long, it will not be found so long as it appears. The average is four years. The Senators will have a powerful check in those men who wish their seats, who will watch their whole conduct in the General Government, and will give the alarm in case of misbehavior; and the State Legislatures, if they find their delegates erring, can, and will instruct them. Will not this be a check? When they hear the voice of the people solemnly dictating to them their duty, they will be bold men, indeed, to act contrary to it. These will not be instructions sent them, in a private letter, which can be put in their pockets. They will be public instructions, which all the country will see, and they will be hardy men, indeed, to violate them. The power to control the Senate, is as great as ever was enjoyed in any Government; and, therefore, its duration will not be too great. They are to assist the Executive in the designation and appointment of officers, and they ought to have time to mature their judgments. If elected for a shorter period, how can they be acquainted with the rights and interests of Nations, so as to form advantageous treaties? To understand these rights, is the business of education. Their business being naturally different, and more extensive than that of the other branch, they ought to have different qualifications, and their duration is not too long for a right discharge of their duties." *

* During the examination of the institution of the Senate, Gerry, who had reported the Compromise, was appealed to. It had been believed, that, "under the idea of stating facts," it was intended, he should "state his reasons." The friends of the Constitution determined to oppose this irregularity; and, on the appeal being made, an objection was taken by Gore, which was sustained by a vehement animadversion on the part of Judge Dana. The feeling manifested, determined Gerry to discontinue his attendance. On his withdrawing, it is stated, that he and Dana were each attended to their resi-

The discussion of the Powers of the Constitution took a wide range. It will be remarked, that, after an able exposition of the necessity of possessing all the powers conferred upon it in relation to commerce, and the exclusive enjoyment of the coasting trade, the direct protection of manufactures was held forth, as one of the great duties, and the most important benefits of a National Government.

The instrument of such protection, the power of levying and collecting taxes, was deprecated in all its extent, as destroying the sovereignty of the States. Sedgwick replied, declaring that all the sources of revenue ought to be in the hands of the government who were to protect us; and that the powers to effect this had always necessarily been unlimited. Congress would exert those easiest to the people—an impost first, then an excise; last, a direct tax, as being difficult and uncertain. But, in case of war, it would be the only resource. As the exercise of the power of taxation had been not only a frequent subject of jealousy in this State, but had recently disturbed its peace, it was the more important to vindicate that conferred upon the general government, in all its bearings. Gore having ably enlarged upon the views of Sedgwick, was followed by Choate. "It was," he observed, "the power of the people concentred to a point. As all power is lodged in them, it ought to be supreme. Not only was it a power necessary to the common defence, but of advantage, in forming commercial treaties. As to our defence, the power of credit, of anticipating our resources, is essential. Were these resources

dences by their respective partisans. After his retirement, Gerry addressed a letter to the Convention, evidently written under a sense of the indignity of which he complained. See also King to Madison.

competent and well established, could there be any doubt, individuals would offer their property cheerfully for such an object?" Bowdoin took a masterly view of the tendency of the Constitution—of its checks and cautions—appealing strongly to the past history and present condition of the country, as evincing the necessity of a general pervading power of commercial regulation—a power which, as it would affect all, would not be injuriously exerted. "The whole Constitution," he remarked, "is a declaration of rights—which, primarily and principally, respect the general government intended to be formed by it. The rights of particular States, or private citizens, not being the object or subject of the Constitution, they are only incidentally mentioned. In considering the Constitution, we shall consider it, in all its parts, upon those general principles which operate through the whole of it, and are equivalent to the most extensive bill of rights that can be formed." "If," he said, "the Constitution should be finally accepted and established, it will complete the temple of American liberty; and, like the Keystone of a grand magnificent arch, be the bond of Union to keep all the parts firm and compacted together. May this temple, sacred to liberty and virtue, sacred to justice, the first and greatest political virtue—and built upon the broad and solid foundation of perfect Union, be dissoluble only by the dissolution of nature; and may this Convention have the honor of erecting one of its pillars on that lasting foundation." This important discussion was closed by Parsons, in his strong didactic style, adding weight to his arguments by the great weight of his rising reputation.

In the course of these debates, the friends of the Constitution had, in the minds of an intelligent body of practical men, a marked advantage, and were manifestly

gaining the confidence of the House. State jealousy was again appealed to. An amendment of the Confederation was the true course. The Constitution was a new creature. Its formation was unconstitutional. Let us adjourn for five or six months, and wait the decision of other States. This suggestion was heard in silence. It was not the wont of Massachusetts to wait the decision of others. The opposition now proposed to abandon the discussion of it by paragraphs, and to consider it at large. This proposition was met and defeated. A desultory debate followed, in which the provision for the importation of slaves was earnestly objected to.

The argument on the judiciary department gave rise to a vehement conflict. It was urged as to its criminal jurisdiction—that under it the power of filing informations without indictment might be exercised; that no qualifications were defined as to the juries, who might be chosen by districts, appointed by the sheriffs during good behavior, or for a shorter term. "Thus, judicatories might be instituted little less inauspicious than the inquisition. Congress might impose whatever punishments they chose to invent. Racks and gibbets might be among the mildest instruments of their discipline. They might compel the accused to furnish evidence against himself; and assume, that the charge exhibited against him was true, unless he can disprove it." These strained interpretations were fully replied to by Gore and Dawes, showing, that the same inferences might be drawn against the Constitution of Massachusetts; that a Constitution could not be expected to define every particular legal provision, and that an argument, from the possibility of abuse, might be raised against all governments. The omission to provide for a jury in civil cases, was explained by an allegation, that the different modes of trial in the different States,

and in different courts of the same State, rendered it impracticable for the Convention to make any general provision on the subject.

Upon the conclusion of the discussion by paragraphs, Chief Justice Parsons moved an assent to, and ratification of, the Constitution. This motion was strongly opposed, but means had been taken to divide the opposition. Hancock surrendered his objections. . .

As President of the Convention, he urged the adoption of the Constitution, with certain amendments, submitted by him, which, he stated, he believed would quiet the apprehensions of its opponents. These amendments were from the pen of Parsons.* †

This determination was supposed to have been produced by the strong manifestations of the feelings of the mechanics of Boston, who, at a full assemblage, passed earnest resolutions in favor of the Constitution, as a great mean of restoring to industry its due rewards. These resolutions were also presented to Samuel Adams, who, influenced by a voice that rarely reached his ear in vain, the voice of numbers, moved the acceptance of the amendment, and supported his motion by a series of cogent remarks on the necessity of adopting the Constitution, as the only mean of preserving the Union. He then urged the excellence of the amendments, particularly that which proposed an explicit declaration, that all pow-

* Curtis's Hist. Const. ii. 541.

† King to Madison, January 23d: "Our prospects are gloomy, but hope is not entirely extinguished. We are now thinking of amendments to be submitted, not as the condition of a ratification, but as the opinion of the Convention subjoined to the ratification. This scheme may gain a few members, but the idea is doubtful." January 30th, same to same. He states their hopes are increasing. "If Mr. Hancock does not disappoint our expectations, our wishes will be gratified, but his character is not entirely free from a portion of caprice."

ers not *expressly* delegated to Congress, are reserved to the States to be exercised by them; another, restricting the control of Congress over the elections of its members; a third, conferring the power of direct taxation only when the proceeds of the impost and excise shall be insufficient for the public exigencies; and another, requiring an indictment before trial, and juries in civil cases, between citizens of different States, at the request of either of the parties.*

His motion gave rise to a discursive conversation, in which the general features of the Constitution were reviewed, and the right of a State Convention to offer amendments, discussed; Ames, in the lead, denying the validity of any acceptance of it *upon condition.* In the closing debates, a powerful array in favor of the Constitution was seen, in its advocacy, by the hitherto almost silent clergy.† The deliberations were terminated by a composing address from Hancock. The question was finally taken upon a ratification, with a recommendation of the proposed amendments. The votes were one hundred and eighty-seven in the affirmative, and one hundred and sixty-eight in the negative, thus, of so numerous a body, showing a majority of only nineteen members—a result, with which, argument had much weight, influence, not a little. In the exceedingly doubtful opinions of the States which had not yet ratified the Constitution, this result was of highest moment. The recommendation of amendments, though an unavoidable concession, was, however, an example pregnant with danger.

* King wrote to Madison, "Hancock submitted the propositions. Samuel Adams gave his public approbation of them. We flatter ourselves the weight of these two characters will insure our success, but the event is not absolutely certain."

† Of the nine Clergy in the Convention, seven voted for the Constitution.

CHAPTER LI.

On the eleventh of December, the Legislature of New Hampshire resolved, that a Convention of Delegates from each town should be held at Exeter on the nineteenth of February following.

During the interval, great efforts were made to excite the prejudices of its people.

This State, from its lofty mountains, and its beautiful lakes, often called the Switzerland of America, owes its chief distinction to the vigorous character of its population, who, originally from the Western Counties of England, were of an humble condition, at first fishers, afterwards farmers, then graziers, among the hills which approach within a few miles of the Ocean. The Colony was primarily held in a separate Government under a grant from the Crown.* Most of its Colonists being from Massachusetts, they early took refuge under her jurisdiction. Thus, the same laws governed, and similar customs prevailed. After the lapse of forty years, it passed under a Royal government, when it again, by a voluntary act, became united with that Colony;† which connection continued some time.

* To John Mason and other Merchants of London—Mason, originally a Merchant, entered the Navy, and was a Governor of Newfoundland. He wished to establish a feudal system in this Colony, which led to his ruin.

† 1689.

Its advance was not rapid. The culture of the soil was early neglected. Food was imported, and the only exchanges were the products of the sea, and of the forest —fish and lumber, part of which were carried in an illicit traffic to the West Indies, returning molasses, the distillation of which was long the only manufacture. By a few Irish emigrants, the fabric of linen was subsequently introduced; and a weak attempt was made to produce woollen goods. Disputed land titles—Indian wars—contests with Canada—unsettled boundaries—were among the vexing incidents of their early history, preparing these Colonists for their gallant part in the Campaigns of the Revolution. Their Independent government established in seventy-six, showed their jealousy of power. It was vested in an Assembly, who chose from their own body, twelve Councillors, performing Legislative and Executive duties— dispensing with a Governor. An attempt to form another Constitution was made the next year. A Convention of Delegates proposed a plan to the people in their several town meetings, which was rejected. Another Convention was held, which "had nine Sessions, and continued for more than two years."* A Government of three branches was proposed by it; the Governor restrained by a Council with controlling powers. Such were the objections to this scheme, that it became necessary to modify, and submit it anew. The Representatives, instead of being elected by Counties, were required to be chosen by the town; and the "Governor," instead of being so named, was to be called, the "President." Thus altered to meet popular feeling, it was once more submitted to the people, and was at last adopted.

The embarrassments resulting from interrupted industry, and a checked commerce, bore with especial severity

* History of New Hampshire, by Belknap.

on a State, with so few resources. The emission of paper money gave a temporary, but fleeting prosperity.

The embarrassments increased, and such laws were made as poor and uninformed people make, goaded by necessity—tender laws, which, were the paper refused, cancelled antecedent debts. In the hope of some day of wiser counsels, written obligations were transferred privately to avoid a tender. Laws against monopolies followed. After these, acts fixing prices, and prohibiting sales at auction; to prevent a further depreciation of the paper. As the result of such Legislation, the paper became valueless; and coin, in small quantities, gradually took its place. This, obeying the laws of commerce, soon disappeared. The Government resorted to taxation in its most oppressive form, and creditors resorted to the courts.

The cry rose aloud for paper money; and the people were invoked "to assert their own majesty as the origin of power, and to make their Governors know, that they are but the executors of the public will."* An act for the tender of property at an appraisal followed—which was renewed; and a law was passed to encourage the import of coin—exempting from port duties vessels laden with it. The effort was vain. The evil grew until the previously mentioned insurrection followed, and was suppressed. It was to the fevered mind of this impoverished State, that the Federal Constitution, with all its salutary guards, was submitted. By many of the electors, inland, isolated, remote from information, the Constitution had not been read. Meeting in their towns under false impressions, a great number of the delegates were chosen with express instructions to reject it.

The State Convention assembled on the day appointed, when it was ascertained that there was a majority,

* Belknap.

chiefly composed of the Delegates from the interior pledged not to approve it. A discussion by paragraphs was proposed. This motion was objected to, and a proposition was offered—first to review the articles of the Confederation to ascertain its defects; and then to determine upon the necessity of adopting the new system.

This proposal failed, and the Constitution was debated in detail. The discussion commenced on the biennial Election of the House of Representatives. After an appeal similar to that made in Massachusetts, in favor of Annual Elections, it was insisted, that the State Legislatures ought to retain the right of recalling the members.

This idea was resisted, on the ground, that it would be a direct interference with the rights of popular election; that it would place the General Government at the mercy of the States; and destroy the salutary influence of the Senate.

After a debate of eight days, a great change of opinion was perceptible; but, many of the members being fettered by instructions, an adjournment of four months was proposed by its friends. Their object was, to diffuse information through the towns, and to induce a revocation of these instructions. This proposition ultimately prevailed, by a majority of only five votes, in a body consisting of one hundred and eight members.

This adjournment, nevertheless, encouraged the adversaries of the new system, and checked the hopes of its friends. *

* March 27th, 1788, Nicholas Gillman, afterwards, Governor of New Hampshire, to General Sullivan. "The opposition is now reduced to system. The leaders are known to each other, and are indefatigable in their exertions. If they succeed, I am apprehensive the sword will be drawn, and your Excellency's early prediction be verified. I am by no means without hope of tranquillity, though I think appearances are very alarming." King to Sullivan, April 9th. 1788. "The unfortunate check the New Constitution received in

The course of Luther Martin, in the General Convention, may have prompted a supposition, that he was sustained by a party of some weight in the State he represented. But it was not so. Every motive united to induce Maryland to adopt the Constitution.

This was the only North American Colony originally settled by Roman Catholics. Of these, a small body, emigrating from the southern counties of England, where they were most numerous, were planted by Lord Baltimore, a quarter of a century after the settlement of Virginia, on the small peninsula lying on the Chesapeake Bay, and the rivers Potomac and Patuxent. To this, they gave the name most favored in their calendar—St. Mary's. Hence they extended along either shore of this great bay, and the borders of these parallel streams. The Government was Proprietary, and it was the happiness of these colonists, that they held, successively, under single Proprietors, men of rank and affluence, of mild and liberal counsels. For it was their signal distinction, that, belonging to a Church denounced for her intolerance,* toleration was "coeval with this Colony."

Its population continued to be chiefly English, with a small admixture of Irish in their few towns, and of Germans in the County of Frederic, crossing from Pennsylvania. With no hostile frontier to defend, enjoying, under their charter, great commercial privileges and exemptions, composed almost entirely of planters and their

New Hampshire has given new life and spirits to the opponents of the proposed system, and damped the ardor of its friends. The arguments in Virginia are mostly local, although many ostensible ones will appear. Impositions of the Eastern States on their Commerce;—and Treaties being the supreme law of the land, thereby compelling the payment of the British debts, will be the *real objections* of the greater part of the opposers, while some others regard a consolidation of the Union as a real evil."

* Bossuet says: "Toleration is not a mark of the true Church."

slaves,* under a genial climate, and with a fertile soil, this Colony rapidly grew in opulence. The first disturbing question was, when becoming a Royal Government, toleration ceased. The Church of England became the established Church, and acts were passed by the Legislature, to prevent the spread of Popery. The discontents thus generated, though not general, were sufficient to give strength to the opposition, which, in each Colony, arrayed itself against the influence of the Crown, and most was seen in grants of money. With no democratic element to control or question their influence, the spirit of these planters was high, and was vigorously shown in resistance to the restrictive policy of England; the more earnestly resisted, as being a direct violation of their chartered privileges, and the more severely felt, as thither was almost their only export, and thence their only supplies, in English vessels;† they thus being wholly tributary. Hence, when the Revolution began, the power of the Crown seemed to vanish, and the planters erected a State Government, more removed from popular influence than that of any other of the States.

The Assembly, or "House of Delegates," was annual; chosen by freeholders. The Senate was elected by electors, chosen by these freeholders, from the State at large; and had a duration of five years. The Governor was to be annually elected by the joint ballot of both houses.

The Legislature of seventeen hundred and eighty-eight, was convened in November, a few weeks after the question of adopting the Constitution was submitted by Congress to the people of the States. On the twenty-seventh of that month, a vote was taken on the call of a State

* More than one-third of the population were *slaves*—one-sixteenth artificers.—*McMahon's History of Maryland.*

† The small trade to the West Indies was in New England craft.

Convention. After some difference of opinion as to the qualifications of the electors of this Convention, and, after a close division, as to the time of the election, the House of Delegates, by a majority of seven out of forty-nine members, ordered the election of a Convention to assemble at Annapolis on the twenty-first of the following April. This vote was little indicative of the feelings of this State. The Legislature had been elected before the question of the new Constitution had been proposed to the consideration of the people; and, as soon as the prospect of establishing a National Government was opened to them, it was generally and warmly welcomed.

Her steadfast policy, as to the public domain, had evinced, as the matter was then regarded, her wise foresight of her interests as a member of an efficient Union. The rejection, by her Senate, of the much-urged issue of paper money,* gave marked evidence of the soundness and firmness of its views; looking for relief† to a solid system of National finance, commensurate with the National exigencies. Her recent compact with Virginia, as to the Chesapeake and its tributaries, showed her sense of the importance of enlarged commercial powers in the government of the Union; and she seemed most to feel the necessity of Hamilton's great idea of nationalizing all the waters of the States, and making them the common highways of one people.

The elections for delegates resulted in such an overwhelming majority of Federalists, that the Convention, which met at the appointed time, seemed to feel that their only office was to give a formal ratification to the Consti-

* "Red money" and "black money" had been the distinguishing epithets of her circulating medium.

† The assumption of the State Debts by the General Government was an important benefit to Maryland.

tution. The opponents of it, certain of defeat, with a view, as is stated, of operating on Virginia, proposed an adjournment, which was lost. A motion to consider the Constitution, by paragraphs—the only fair mode of discussion—followed, but was rejected by the votes of all, except five members. Being then read at large, its adoption was opposed by Samuel Chace, Paca, John Francis Mercer, and Luther Martin. The final vote was taken after a session of six days; and it was ratified by sixty-three to eleven voices. On this decisive result, several of its adversaries came forward, and pledged themselves to support it. A series of amendments was presented by Paca, and referred to a committee to be submitted to the people; and, if approved by them, to be laid before Congress for its action.

No record of the debates in this State has been found. Among a body of individuals of high character, and enlarged views, those most known to the country, from previous service, were Governor Johnson, Tilghman, Goldsborough, McHenry, Plater, Carroll, and Hanson, of whom several had been the framers of the Constitution of the State.

Baltimore, where the most strenuous opposition had been made, following the example of Boston, celebrated this act of the Convention by a triumphal procession, in which the most conspicuous object, was a miniature vessel, called "THE FEDERALIST."

The unanimity of Georgia, followed by the decisive majority in Maryland, induced a strong expectation, that South Carolina would unite with equal ardor in the contemplated change of Government. This expectation was heightened by the unanimous assent of her delegates in the Federal Convention, by their known influence in the Councils of their State; and, with one exception, by their

elevated characters. But local causes existed which tended to damp this hope; and the enemies of the system confidently asserted, that South Carolina would dissent.

The first government of this colony was unique. A charter was granted by England to eight Proprietors, men of highest rank and influence. It conferred on them absolute power of erecting courts, appointing magistrates, making war, conferring titles, the receipt of customs and raising subsidies, with the consent of the freemen of the colony; ecclesiastical patronage, but secured religious toleration. The task of framing a government was confided by them to a distinguished metaphysician.* He formed a system which made the eldest Palatine, Governor—the object of which was expressly stated to be, "to establish a Government agreeable to the monarchy, that we may avoid making too numerous a democracy"—to be succeeded by the eldest surviving Palatine; who, with three other Palatines, was to constitute a court empowered to assent to, or dissent from, all laws passed by a parliament of two houses, elected biennially; the Upper House to consist of seven deputies—the eldest Landgraves and Cassiques; and also seven chosen by the Assembly, who were to represent counties and towns. There were to be three classes of nobility—Barons, Cassiques, and Landgraves—each vested with large, inalienable, landed estates.

Such a scheme could not, of itself, prevail long; and especially, among a population so various, and under such neighboring influences. The earliest important settlement†, was English, at a point, near the confluence of the Ashley and the Cooper—now Charleston.

A small body of Dutch followed. Soon after, numer-

* John Locke. † 1680.

ous Huguenots, of fervent piety, noble courage, gentle manners, upon whom adversity had shed its happiest influences. These were grouped here and there upon the coast, and along the streams; which, rising in the upper country, traversed the low plain, through which they glided to the ocean.

The essential power of this Colony, despite its arbitrary government, soon settled in the planters, many of them gallant cavaliers, quick to quarrel, firm in the assertion of their rights—not too careful of the rights of others. While these were not in harmony with the Huguenots, because they were French, and were dissenters;* they also steadily contended with the Proprietors; were resorting to arms, until at last the Colony was purchased by the Crown, and a government was instituted of three branches—a Governor, and Council, appointed by the king—an Assembly elected by the people.

During the half century which had elapsed, its progress was not rapid. The introduction of slaves, who were three-fourths of the population, deterred the immigration of white men; also discouraged by early collisions with the colonies of Spain and France, by Indian wars, and by the pirates who infested the many inlets.

Under the Royal Government quiet was established. The growth of rice and indigo made the growers opulent. Bounties were granted on articles needed by England, who, excepting a permitted traffic with the West Indies, monopolized the trade. No colony more flourished; and the planters seemed content with their affluence and with the social enjoyments, which imparted a soft elegance and warmth to Southern life.

But to men of education and spirit, colonial depend-

* The Supremacy and Test oaths had been adopted by the Colonial Legislature.

ence was irksome; and, among the body of the people, opinions were nurtured, by successive accessions of emigrants, breathing hostility to governments whose burthens they had felt—leading to Independence.

To the increase of disaffection, New England had contributed a few dissenters. Hollanders and Germans were seen on the borders of the more central rivers. Swiss, near the Savannah; Irish, in numbers, at Williamsburgh; while, along the interior frontier, attracted by the mild winters and natural grasses, herdsmen* strayed in from Virginia and Pennsylvania, meeting there, robust rebels recent from the Highlands of Scotland. A body of almost naked Palatines were transported hither, to whom every change promised advantage. This various population was much dispersed. The few gatherings of it were mere hamlets. The Courts were held at Charleston; and thus, without schools, and with infrequent participation in the administration of justice, grew up a people, eager to escape the yoke of a foreign government, though little prepared by intervening incidents to accept one so refined and complicated as the Federal Constitution; intended to control the aberrations, which Revolutions often cause.

The English restrictions on trade alarmed the Planters. The interference with the paper emissions embarrassed them. The idea of Parliamentary taxation kindled them to resistance. Hence, nowhere was the spirit of revolt more ready, or the energy of resistance more liberal, more prompt, or more united. Save the Royalists, on the fork between the Broad and the Saluda rivers, South Carolina had one purpose; and, amid invasion and grievous disasters, that purpose was steadfast.

But the long possession of the State by the enemy

* At the Cow Pens.

and their excesses, had impoverished and infuriated the people. Retaliation had committed like excesses; and their necessities had compelled the enactment of laws deferring the collection of debts. The suspension of civil, and, in a few instances, of criminal justice, were the consequences of such disorder. A marked difference was also seen in the temper of the great divisions of the State. On the seaboard, the planting interest, united with the mercantile, in the demand of a National Government. But, between the lower and the upper country was a wide, unsettled space.

Thus, the influence of the enlightened planters was somewhat removed; and was viewed with jealousy, as the capital and its accessories were the creditor; the frontier, the debtor portion of the State.

Among the planters, there was not an entire unity of opinion as to the proposed Government. Several looked with apprehension on its contemplated vigor. Others, as their staples must be the chief subjects of commercial treaties, feared the extent and disposition of the Treaty power; more, were jealous of the navigating preponderance of the North, and but few, were wholly free from solicitude as to the security of their property in slaves.

The injury South Carolina had suffered by the deportation of slaves, during the Revolution, had induced her to insist, the more earnestly, upon the clause in the Constitution permissive of their importation, though clogged with a duty. In the then prevailing sentiment of nearly the whole United States, would that property, in the long future, be secure; or must the State become a waste?

These objections, and these fears, were overbalanced by a wise confidence, that, if the Constitution should effectually suppress local mis-legislation, it would remove the principal causes of distress; by an innate conviction,

that the slave trade was a series of crimes; and, by an assurance, that the value of her exports was the best guarantee for their protection in the National ports, and would induce a beneficial competition for their carriage. Nor could it be without its influence, that she was a large creditor State; and that, in an adjustment of the National burthens, a provision for this debt would be a great measure of justice, and a great relief to her finances.

The Legislature assembled in January, and on the fourteenth of that month, the Senate passed a vote of thanks to the Federal Delegates, in which, it is stated, the first branch refused to concur. The question of calling a Convention arose upon a message of the Governor, and upon the report of a Committee in favor of holding the election of its members in the ensuing month, to convene in March. The debate continued four days, when, after an able discussion, the election of a Convention to assemble at Charleston, in May, was ordered by a majority of one vote, in a House consisting of one hundred and fifty-one members.

The debates of this Convention are imperfectly reported; but most of the questions of interest had been previously examined, and with much ability, in the Legislature.

The opposition to the Constitution in that body was chiefly urged by Rawlins Lowndes, a person of much consideration, who saw in the proposed Constitution such a tendency to oppression, as to have declared at the close of a series of animated invectives, that, its "dangers were so evident, that when he ceased to exist, he wished for no other epitaph, than to have inscribed on his tomb:—'Here lies the man, that opposed the Constitution, because it was ruinous to the liberty of America.'"

As a consequence of his opposition, he was not elected

to the State Convention. Its leading advocates were Charles Pinckney, General Cotesworth Pinckney, Rutledge the Chancellor, Edward Rutledge, Pierce Butler, and Robert Barnwell.

The discussion was opened by the first individual, who anticipated the objection of a want of power in the Convention, by reminding them of the important fact, that most of the appointments of its members were made under the broad recommendation of the Annapolis Convention, and previous to that of Congress being known. He then stated, that the object of the Convention was to establish a Government, not to amend a league; mentioned the leading points of controversy which had arisen, and vindicated the structure of the Government; arguing that the different derivation of the two branches of the Legislature would render them salutary checks. He also defended the Constitution of the Judiciary, as the most important, though most intricate, part of the system. He urged the necessity of conferring on it all the powers it possessed; to ensure the observance of treaties, to decide National questions, to maintain the supremacy of the Constitution and the laws; and to control and keep the State judicatories within their proper limits. Thus, he observed, "under a wise management, this department might be made the KEYSTONE of the Arch."

He acknowledged, that the Executive was "not constructed upon those firm and permanent principles that would have been pleasing to him; but, that it was as much so, as the present temper and genius of the people would admit." He avowed his objection to that part of the system which connected the duties of the Executive and Senate, as producing a divided responsibility; not from a fear of too much power in the Federal Head. His apprehension was, that, "it was impossible while the State

systems continue, and continue they must, to construct any Government upon Republican principles, sufficiently energetic to extend its influence through all its parts." "The State Governments," he remarked, "will too naturally slide into an opposition against the general one, and be easily induced to consider themselves its rivals. *They will after a time resist the collection of the Revenue*, and if the General Government is obliged to concede, in the smallest degree, on this point, they will of course neglect their duties, and despise its authority. A great degree of weight and energy is necessary to enforce it—nor is any thing to be apprehended. All power being immediately derived from the people; and the State Governments being the basis of the general one, it will easily lie in their power to interfere, and to prevent its injuring or invading their rights." These observations were followed by others, showing the tendency to disunion, the necessity of vigor in the system; and disclosing his hopes and his doubts as to the result of the "experiment."

After these preliminary remarks, a warm discussion arose upon the disposition of the Treaty-making Power; as to the relative weight of the States in the Legislative departments; the power of regulating Commerce, and collecting Revenue; and the constitution and powers of the Executive.

On all these points, the arguments of Cotesworth Pinckney, who had been a member of the Federal Convention, were the fullest and most able. After an instructive narrative of the progressive deliberations of the Federal Convention, upon the Treaty-making Power, and of the difficulties attendant upon the selection of a different depositary of it, he defended the probable operation of this part of the plan from the charge, that this great power would be exerted by a body of Senators, co-operat-

ing with the President. He insisted, that its importance would induce a constant and full representation of the States in the Senate; and argued, with much force, the necessity of declaring treaties the Supreme law of the land, both from the federal nature of the Government, and from the past experience of the country.

John Rutledge, Chancellor of the State, sustained this view in a brief address. He declared, in reply to Lowndes, that every treaty was a law paramount, and must operate; that such was their operation even under the articles of confederation. These had declared, that the treaties proposed to France and Spain, would not be interfered with, by any State, in its imposts or duties. Would not those treaties be a sufficient bar to any such interfering impositions? What sort of power is that, which leaves individuals in full power to reject or to approve?

He scouted the idea of a complicity between the President and part of the Senate, in an attack upon the liberties of the people. Lowndes replied, avowing his sincere belief, "that when this new Constitution should be adopted, the sun of the Southern States would set, never to rise again." He urged, the majority of the Eastern States in the House of Representatives, and their interests being wholly different, that there was not the smallest chance of receiving adequate advantages. "What cause was there for jealousy of our importing negroes? Why confine us to twenty years, or rather why limit us at all? He thought this trade could be justified on the principles of religion, humanity, and justice; for certainly, to translate a set of human beings from a bad country to a better, was fulfilling every part of these principles. But they don't like our slaves, because they have none themselves; and therefore want to exclude us from this great advantage. Why should the Southern States permit this, without the con-

sent of nine States?" He strongly deprecated the power over commerce, denying the reciprocity of the arrangement. "They are to be the carriers, we are to be the consumers." Still, he avowed, if the Constitution, "was sanctioned by the people, it would have his hearty concurrence and support. He was very much, originally, against a Declaration of Independence; he also opposed the instalment law, but when they received the approbation of the people, it became his duty, as a good citizen, to promote their due observance."

Edward Rutledge and Cotesworth Pinckney answered. "In the Northern States," the former remarked, "the labor is performed by white people, in the Southern by black. All the free people, (and there are few others,) in the Northern States, are to be taxed by the new Constitution; whereas, only the free people, and two-fifths of the slaves in the Southern States, are to be rated in the apportioning of taxes. He also argued, that the interest of the Southern States would be promoted by the navigating interests of the Northern States; that they should be the last to object to it.

Pinckney resumed the discussion as to the Treaty-making power, denying the doctrine, that in England, a treaty, to be binding, must be ratified by Parliament—and quoting, with much effect, the great jurists Vattel, Burlemaqui, and Blackstone. "South Carolina," he said, "considering its situation and the valuable product it has to export, is particularly interested in maintaining the sacredness of treaties, and the good faith with which they should be observed by every member of the Union." With respect to the alleged inequality of representation, he remarked, "as we have found it necessary to give very extensive powers to the Federal Government, both over the persons, and the estates of the citizens, we thought it

right to draw one branch of the Legislature immediately from the people, and that both wealth and numbers should be considered in the representation. We were at a loss for a rule to ascertain the proportionate wealth of the States; at last, we thought, that the productive labor of the inhabitants was the best rule for ascertaining their wealth. In conformity to this rule, joined to a spirit of concession, we determined that Representatives should be apportioned among the several States, by adding to the whole number of free persons, three-fifths of the slaves. We thus obtained a representation for our property; and, I confess, I did not think we had conceded too much to the Eastern States, when they allowed us a representation for a species of property which they have not among them.

"The honorable gentleman alleges, that the Southern States are weak. I sincerely agree with him. *We are so weak, that by ourselves we could not form an Union strong enough for the purpose of effectually protecting each other.* Without union with the other States, South Carolina must soon fall. Is there any one among us so much a Quixote, as to suppose, that this State could long maintain her Independence, if she stood alone; or was only connected with the Southern States? I scarcely believe there is. Let an invading power send a naval force into the Chesapeake to keep Virginia in alarm, and attack South Carolina with such a naval and military force as Sir Henry Clinton brought here in eighty; and though they might not soon conquer us, they would certainly do us an infinite deal of mischief; and if they considerably increased their numbers, we should probably fall. As, from the nature of our climate, and the fewness of our inhabitants, we are undoubtedly weak; should we not endeavor to form a close Union with the Eastern States,

who are strong? And ought we not to endeavor to increase that species of strength which will render them of most service to us, both in peace and war? I mean their Navy.

"We certainly ought; and by doing this, we render it their particular interest to afford us every assistance in their power; as every wound that we receive will eventually affect them. Reflect for a moment on the situation of the Eastern States, their country full of inhabitants, and so impracticable to an invading enemy, by their numberless stone walls, and a variety of other circumstances, that they can be under no apprehension of danger from an attack. They can enjoy their Independence without our assistance. If our Government is to be founded on equal compact, what inducement can they possibly have to be united with us, if we do not grant them some privileges with regard to their shipping; or, supposing they were to unite with us without having these privileges, can we flatter ourselves that such Union would be lasting, or that they would afford us effectual assistance when invaded? Interest and policy both concur in prevailing upon us to submit the regulation of commerce to the General Government. But, I will also add, justice and humanity require it likewise. For who have been the greatest sufferers in the Union, by our obtaining our Independence? I answer, the Eastern States; they have lost every thing but their country and their freedom. It is notorious, that some ports to the Eastward, which used to fit out one hundred and fifty sail of vessels, do not now fit out thirty; that their trade of ship-building, which used to be very considerable, is now annihilated; that their fisheries are trifling, and their mariners in want of bread. Surely, we are called upon, by every tie of justice, friendship, and humanity, to relieve their distresses; and as by their exer-

tions, they have assisted us in establishing our freedom, we should let them, in some measure, partake of our prosperity."

As to the restrictions on the African Trade, he stated, that it was a necessary compromise "with the religious and political prejudices of the Eastern and Middle States, and with the interested and inconsistent opinion of Virginia, who was warmly opposed to our importing more slaves." The Eastern States were willing to consent to a deferred restriction. "The Middle States and Virginia were for an immediate and total prohibition. We have secured an unlimited importation of negroes for twenty years; nor is it declared, that the importation shall be then stopped. It may be continued. We have a security, that the General Government can never emancipate them; for no such authority is granted; and it is admitted, on all hands, that the General Government has no powers but those expressly granted by the Constitution, and that all rights not expressed, are reserved to the several States. We have obtained a right to recover our slaves in whatever part of America they may take refuge—a right we had not before. We have made the best terms for the security of this species of property it was in our power to make."

In reply to an eulogium on the Confederation, Cotesworth Pinckney well remarked, "The honorable gentleman, in the warmth of his encomiums on the old plan, has said, that it had carried us with success through the war. In this, it has been shown, that he is mistaken; as it was not finally ratified till March, seventeen hundred and eighty-one; and, anterior to that ratification, Congress never acted under it, nor considered it as binding. Our success, therefore, ought not to be imputed to the old Confederation, but to the vast abilities of a Washington,—

to the valor and enthusiasm of our people,—to the cruelty of our enemies, and to the assistance of our friends. The gentleman had mentioned the treaty of peace in a manner as though our independence had been granted us by the King of Great Britain; but that was not the case. We were independent before the treaty, which does not in fact grant, but acknowledges our independence. We ought to date that invaluable blessing from a much older charter than the treaty of peace—from a charter which our babes should be taught to lisp in their cradles—which our youth should learn as a *carmen necessarium* or indispensable lesson; which our young men should regard as their compact of freedom, and which our old should repeat with ejaculations of gratitude for the bounties it is about to bestow on their posterity. I mean 'the Declaration of Independence,' made in Congress the fourth of July, seventeen hundred and seventy-six.

"This admirable manifesto, which for importance of matter and elegance of composition, stands unrivalled, sufficiently confutes the honorable gentleman's doctrine of the individual sovereignty and independence of the several States.

"In that Declaration, the several States are not even enumerated, but, after reciting in nervous language and with convincing arguments, our right to independence, and the tyranny which compelled us to assert it, the Declaration is made, in the following words:—'We, therefore, the Representatives of the United States of America, in General Congress assembled, appealing to the Supreme Judge of the world for the rectitude of our intentions, do, in the name, and by the authority of the good people of these Colonies, solemnly publish and declare, that these United Colonies are, and of right ought to be, FREE AND INDEPENDENT STATES.' The *separate* independence and

individual sovereignty of the *several* States were never thought of by the enlightened band of patriots who framed this Declaration. The several States are not even mentioned by name in any part of it, as if it was intended to impress this maxim on America, that our freedom and independence arose from our UNION, and that without it, we could neither be free nor independent. Let us, then, consider all attempts to weaken this Union, by maintaining that each State is separately and individually independent, as a species of political heresy, which can never benefit us, but may bring on us the most serious distress."

These eloquent remarks were followed by an exposition of a part of the system, which, it is seen, had been elsewhere the source of much clamor,—the power conferred upon Congress to regulate the elections of its members. He closed with a vindication of the electoral process of choosing the President—with a defence of the powers of Congress, particularly respecting commerce and the currency; of the omission to provide for trials by Jury in civil cases; and with a forcible reply to the allegation, that the proposed Government was a violation of the Confederation. The honorable gentlemen say:—"Compacts should be binding, and that the Confederation was a compact. It was so; but it was a compact that had been repeatedly broken by every State in the Union; and all the writers on the laws of nations agree, that when the parties to a Treaty violate it, it is no longer binding. This was the case with the old Confederation. It was virtually dissolved; and it became necessary to form a new Constitution to render us secure at home, respectable abroad, and to give us that station among the nations of the world, to which, as a free and independent people, we are justly entitled."

The CONVENTION of the State assembled at Charles-

ton on the appointed day, and, having elected General Thomas Pinckney, the elder brother of Charles Cotesworth, its President, proceeded to discuss the Constitution, by paragraphs. After a debate of nine days, in which the plan of Government was investigated at length, the deep interest that South Carolina had in its establishment shown, and after the rejection of a proposition to adjourn, until October, to await the action of Virginia, a vote was taken, showing one hundred and forty-nine members in favor, and seventy-three hostile to the system. The Constitution was then ratified unconditionally; but amendments were recommended to be engrafted on it in the mode it prescribed. Late in the month of May, this result was celebrated in Charleston, by a numerous procession, in which the Ship "Federalist," the emblem of the commerce of the United States, told of the hopes and future power of this great Republic.

CHAPTER LII.

As far as any distinction can be observed between the motives of action in the different sections of the Union, it would appear, that the great anxiety of the Northern States was, that the proposed Government should conform in its structure, to their own popular institutions.

The active genius of their people felt the necessity of conferring powers adequate to the exigencies of the whole Republic; and they were chiefly desirous, by balances in the Constitution, and by limitations in the tenure of office, to check the abuse of those powers.

The Southern States, were more solicitous, lest the new system should interfere with their peculiar condition, and render their wealth tributary to the superior energy and enterprise of those engaged in Navigation. The former cared most for the direction of their strength,* the latter for the protection of their weakness. But, though thus modified by their respective situations, the prevailing sentiment throughout the Confederacy was a vigilant jealousy of their liberties.

* It is related, that at the close of the war, Washington said to General Lincoln, "We know what we Virginians have been fighting for, with our fine farms and climate; but can you tell, what it is, you, New Englanders, have fought for, with your cold and barren lands?" "Yes," Lincoln replied, "for the liberty of using our heads and our hands."

In those members of the League, whose action on the Constitution has thus far been related, the great mass of talent and of influence had been exerted in its favor. The attention is now called to States of primary importance to the Federal system, where the conflict was more obstinate, the result not less doubtful; the interests and motives more complicated—Virginia, and New York.

It has been previously mentioned, in a letter of General Washington, that, in the counties of Virginia adjacent to his residence, the Constitution "had been embraced with enthusiastic warmth."

Berkeley expressed her gratitude to the delegates in the Federal Convention who had signed it. The clergy of the different denominations were requested to return thanks for the unity of its proceedings, and pledges were given to support it.

In Fredericksburgh, and Petersburgh, both commercial towns, their delegates in the Legislature, then in session, were instructed to vote for a State Convention.

Such influence as Washington felt he could with propriety exert, amid the general expectation, that he was destined to the Presidency, was used by him. Patrick Henry had declined an appointment to the Convention, "to reserve himself," it was said,* "for another sphere, where its result would receive its destiny from his omnipotence." Immediately after his return to Mount Vernon, Washington inclosed a copy of the Constitution to Henry, stating his sincere belief, that it was the best that could be obtained at that time; and, as a Constitutional door was opened for future amendments, that the adoption of it was desirable. "From a variety of concurring accounts," he observed, "it appears to me, that the political concerns of this country are, in a manner, suspended by

* Madison to Washington.

a thread; and that the Convention has been looked up to by the reflecting part of the community, with a solicitude, which is hardly to be conceived; and, if nothing had been agreed upon by that body, anarchy would have ensued, the seeds being deeply sown in every soil." Henry confessed, that he could not accord with the plan.

The Legislature, then sitting at Richmond, took into consideration the call of a State Convention, on the twenty-fifth of October, eighty-seven. A resolution having this object, in pursuance of the recommendation of Congress, was presented by Francis Corbin. It was opposed by Henry, on the ground, that it implied a mere power of acceptance or rejection. He moved an amendment, which gave the power of proposing alterations. In this, Mason concurred, exclaiming—"I would have lost this hand before it should have marked my name to the new Government." Marshall, a now great and venerated person, replied—"That he would give to future conventions the fullest latitude in their deliberations; the privilege of considering fully and freely the nature of the Government in which we were to live. But, he would not give the impression, that they disapproved the new Government; and, therefore, he moved a substitute, which passed, that a Convention be called, and "the new Constitution be laid before them for their free and ample discussion."

An election was ordered in March, of a Convention to assemble on the second of June. "The new Constitution," Washington wrote to Hamilton, "has, as the public prints will have informed you, been handed to the people of this State by an unanimous vote of the Assembly; but it is not to be inferred from hence, that its opponents are silenced. On the contrary, there are many, and some powerful ones—some of whom, it is said, by over-shooting

the mark, have lessened their weight; be this as it may, their assiduity stands unrivalled, whilst the friends to the Constitution content themselves with barely avowing their approbation of it. Thus stands the matter with us at present, yet my opinion is, that the major voice is favorable."

During all this period, New York was the political centre of the United States. There the General Congress was in session; there were concerted the various devices of the opposition; thence radiated the light of "the Federalist." *

It has been mentioned, that a letter was addressed by Elbridge Gerry to the Legislature of Massachusetts, assigning his reasons for refusing his signature to the Constitution.

On the tenth of October, another public letter was written by Richard Henry Lee, then a delegate in Congress from Virginia, in reply to Governor Randolph, of that State, urging "the formidable combination of power conferred by the Constitution on the Executive and the Senate; and, denouncing the indirect process of electing the former; his term of office, and that of the Senate; and their little responsibility. You are therefore," he remarks, "well warranted in saying 'either a monarchy or an aristocracy will be generated, perhaps the most grievous system of Government.'" He suggested, that previous amendments should be made, of which an outline was given; and that a Second General Convention be called.

Soon after, a paper was promulgated with some show

* That eminent jurist, Chancellor Kent, relates: "The essays composing this," as he styles it, "'immortal work,' made at the time a wonderful impression upon reflecting men."

of importance, entitled "The OBJECTIONS of the Hon. George Mason to the proposed Constitution."

Mason, who is stated to have been the framer of the Constitution of Virginia, objected to the House of Representatives, as being "the shadow only, of representation," to the powers of the Senate over money bills, appropriations, the salaries of officers—that these and the other great powers, would "destroy the balance in the Government, and enable them to accomplish what usurpations they please, upon the rights and liberties of the people"—that, the President had "no constitutional council"—that, the Vice-President was "a dangerous and unnecessary officer." The Judiciary, he pronounced of absorbing power. "This Government," he observed, at the close, "will commence in a moderate aristocracy. It is impossible to foresee, whether it will, in its operation, produce a monarchy or a corrupt, oppressive aristocracy It will terminate in one or the other." These publications gave rise to much angry controversy. Another objector followed—Edmund Randolph. Of a stock, who boasted their descent on one side from Pocahontas, and on the other, from an English poet, Randolph had increased his influence by intermarriage with another important family. His career was early fortunate. Soon after he began his professional life, he was appointed Attorney General of the State, a place in which he was preceded by his father and grandfather. Hence, he was elected a delegate to Congress; and, after three years' service, was appointed a delegate to the General Convention, where, as seen, he refused to sign the Constitution. His dissent was, for a long time, ascribed to the departure in the plan from that which he had proposed.

Invited by his friends to disclose his objections, he stated, that his letter to the House had been written ever

since its date, but withheld from delicacy as to two questions, then depending—"One, respecting the Constitution; the other, *myself*." In this letter, he gave a summary view of the situation of the Union, and of the defects of the Confederation, which, he said, "must be thrown aside." He then stated his objections to the Constitution, but observed: "If they reject it, they must bid a lasting farewell to the Union." The personal motive is explained, by the fact, that, at the date of the withheld letter, he was a candidate as Governor; subsequent to it, he was elected.

About the same time, a series of essays, supposed to be from the pen of Richard Henry Lee, were circulated throughout New York and Connecticut, by the Collector of the New York Impost, Colonel Lamb, who was appointed chairman of a society recently formed in New York, under the designation of "Republican," for the purpose of defeating the Constitution. Its opponents, in the first instance, called themselves "Federalists."* This name they yielded to the friends of the Constitution. They then called themselves "Federal Republicans;" next, adopted the name of "Republicans," which was, ultimately, merged in that of "Democrats." This society contemplated its extension throughout the States, and letters were addressed by Lamb to its leading opponents in different sections of the Union.† To counteract the

* Life of John Lamb, 306.

† Col. Oswold was sent to Virginia, whence Henry wrote, confident of its defeat: "Four-fifths of our inhabitants are opposed to the new scheme of Government, nine-tenths of those south of James river. Col. George Mason has agreed to act as chairman of our 'Republican Society.'" North Carolina, he states, was more decidedly hostile than Virginia. Richard Henry Lee also entered into the Association. He wrote, denouncing the Constitution, as "an elective despotism." A correspondence was opened with "Judge Burke and Rawlins Lowndes, of South Carolina; Timothy Bloodworth, of North Carolina; Patrick Henry and William Grayson, of Virginia; Samuel Chase,

powerful influences in Virginia, a letter was written by Washington, in which he declared his conviction, that a second Convention "will agree upon no general plan;" "that the General Government was at an end." He deprecated the consequences of a fruitless attempt to amend the proposed Constitution. "Of this," he said, "I am no blind admirer; for I saw the imperfections of the Constitution, I aided in the birth of, before it was handed to the public; but I am fully persuaded, it is the best that can be obtained at this time; that it is free from many of the imperfections with which it is charged; and, that it, or disunion, is before us to choose from. If the first is our election, when the defects of it are experienced, a constitutional door is opened for amendments, and may be adopted in a peaceable manner, without tumult or disorder."

This disclosure of his views was arraigned with great personality, and bitterness. While these influences were exerted upon Virginia, the struggle in New York was steadfastly maintained.

The most determined opponent of the Constitution was Governor Clinton, who directed against it all the weight of his official influence, every local prejudice and interest. Hamilton was its foremost champion, exerting all his powers of mind, and all his zeal. "He watched forever over the Constitution," said a warm fellow-soldier, "for it was his child."

The Legislature of New York met in January. The speech of the Governor urged the importance of keeping up the Representation in Congress. Having adverted to

of Maryland, and Joshua Atherton, of New Hampshire. All these entered very zealously into the scheme, and concurred in representing the great body of the people of their respective States, as being determinedly hostile to the adoption of the Constitution." Ibid. 307 to 314. See letters of Henry, Lowndes, R. H. Lee, S. Chase, Grayson, and Atherton.

topics of State interest; he placed before them the proceedings of the General Convention, and the act of Congress for their transmission to the States, with this remark: "From the nature of my office, you will easily perceive, it would be improper in me to have any other agency in the business, than that of laying the papers before you for your information." He then congratulated them on the situation of the country, pronouncing the profuse use of foreign luxuries, "the source of most of the existing difficulties;" and recommended the encouragement of manufactures. Among the papers referred to, was a letter from Yates and Lansing, stating their reasons for withdrawing from the Convention, which confirmed, beyond question, the alleged hostility of its authors to any General Government.

On the twenty-second of January, the election of Delegates to Congress was held. After an unsuccessful, but vindictive opposition to Hamilton—whose signature to the Constitution was denounced as "an open defiance of the State, and of his colleagues, as an attempt to transfer power from the many to the few," he, with four other persons, was chosen.

A resolution calling a Convention being submitted to the Legislature, by Benson; a substitute was offered, assailing Hamilton, by a declaration, that the Delegates from New York were merely empowered to propose amendments to the Articles of the Confederation;* that the Federal Convention had greatly exceeded their powers in reporting a plan of Government which would alter the

* "But for the daring energy of that Delegate, who assumed the responsibility of exercising powers, denied by his more prudent colleagues, and which a vast majority of his Constituents utterly repudiated, we might never have obtained the great blessing of a powerful, yet free Government." Life of Lamb, 319.

State Constitution, and greatly affect the rights and privileges of the people. The resolutions which were to follow, were not disclosed. Benson, having defended the action of the Convention, and impeached the motives of the opposition, produced a paper, containing the withheld resolutions, one of which, declaring the disapprobation by the Legislature of the Federal Constitution, was obliterated. He adduced this to show their original purpose, commenting on this attempt to prejudice the public mind. After a prolonged debate, the substitute was rejected, and the original resolution was adopted by a majority of five votes. An attempt was made in the Senate, by Yates, to commit this resolution. It was resisted by General Schuyler, Duane, and Lawrence, and was defeated. The resolution, for a State Convention to meet on the seventeenth of June, was carried by a majority of three members—the time being selected, in concert with the opposition in Virginia.

The obstinacy of the Anti-federalists is seen in the various efforts to prejudice the public mind, and in the closeness of these votes. It was also strongly evinced in a discussion which arose a few days after. A bill had passed the Senate, prescribing certain oaths—one of allegiance to the State Constitution. Benson moved its rejection, insisting that the term, "allegiance was little understood, and very indefinite. Allegiance," he said, "was due to the General Sovereign, and, since the Confederation, was not due to an Individual State, but to the United States in Congress, they possessing all the great powers of Sovereignty." The distinct object of the bill was then tested by a motion to erase the words "allegiance to the State of New York," and to insert "to the United States." In opposition, it was urged, that a power to make war or peace, did not constitute the Sovereignty; and it was

asked, if taking arms against the Constitution of New York was not treason? The sovereignty was divided. Their situation was like that of the German Empire, where the oath of allegiance was to the separate States.

Allegiance, the Federalists admitted, was due to the sovereignty of the State. But were not the people the sovereigns, and the Legislature merely their Representative? Does the majority choose to change the Government, allegiance is due to that majority. All the Sovereignty was not in the United States, but the powers of sovereignty were, to which allegiance was due. If one State may require an oath of allegiance to itself, may not every other State? What would be the effect of such conflicting oaths? Should the United States declare war against an enemy, and New York refuse to declare war, what would be his situation, who had taken an oath of allegiance to the State? By this oath, a man might be prohibited taking arms to change the Constitution of the State. If this was intended, it should be avowed. But it was impossible to bind individuals to remain unalterably under the same Government—yet under such an oath, no man could attempt a change. The State did not want the additional security of an oath. If oaths had an efficacy, let the General Government have the support of them, for there it was most requisite. Towards it, had been the greatest delinquencies. In war, the citizen would hold himself bound to promote the public measures—in Peace, to the strictest observance of treaties. The States would thus be better enabled to perform their Federal duties, and to preserve the Union. Against the force of party and State prejudice, these arguments had little weight. The bill passed by the vote of three fourths of the Legislature.

Intelligence received at this time, of the ratification of the Constitution, by Massachusetts, greatly encouraged its

friends, or as they were now known—The "Federalists." This event was celebrated by them, at New York, with much exultation; and they commenced the canvass for the choice of Delegates to the State Convention, with renewed hopes. The spirits of its opponents flagged, their violence was exasperated. The former appealed to the public creditors, and inquired, who could repair the violated faith of the nation? They charged upon their antagonists, the disfranchisements, and confiscations, which had stained the early pages of American History; asked, where was the evidence of their vaunted devotion to liberty, when its loudest advocates would have denied to the people, freedom of choice as to the Government under which they would live?—and pointed to the Federal Constitution, as the only remedy for existing evils. The Anti-federalists alarmed the jealousy of the people by exaggerated representations of the powers of the new Government. The President, they declared, was a king, in every thing but the name; the Senate, an irresponsible aristocracy; the judiciary, a permanent tribunal, not less dangerous than "a Star Chamber."

The zeal of the Federalists was imputed to a thirst of power, or of money; and the ex post facto clause was represented as a provision "to protect public defaulters!"

As each successive State adopted the Constitution, the result, as seen, was signalized by a festival. The national pulse beat high, and the triumph was extending over the Union.

This rejoicing at the prospect of the national salvation, was resented by the Anti-federalists, as an indignity; and was followed by calumny, and by outrage. The idle tale of a project in the Convention, to invite the Bishop of Osnaburgh to a throne, was widely circulated. To weaken the impression of the "Federalist," it was pub-

lished, that its authors, "Hamilton and Madison, both proposed, in the great conclave, having a king."*

In Pennsylvania, its adoption by that State was imputed to the influence of the Bank, and to the corruption of Robert Morris. The interior counties were misled by these representations, and at Carlisle, an assemblage to celebrate this event, was driven from the ground. The following day, its ratification was announced amidst volleys of musketry. The mob then assembled under arms, and burnt in effigy, the Chief Justice McKean and James Wilson, both signers of the Declaration of Independence. The rioters were committed to prison.* An armed body of a thousand men marched into the town, released the prisoners, and burned the commitment. In the County of Ulster, in New York, the seat of Governor Clinton's greatest personal influence, after a formal procession, the Constitution was trampled under foot, and committed to the flames amidst the incessant shouts of a large concourse of his partisans. In Albany, there was open violence. Having burned the Constitution, its opponents planted cannon in the street, to stop the progress of a Federal procession, led by Schuyler; and assailed it with missiles. A rencontre ensued; bayonets and cutlasses were used, wounds inflicted. The influence of the dominant party was also directed against the press. Among other instances, Abraham Yates, the devoted friend of Clinton, prosecuted the editors of a gazette for an alleged libel in the course of their defence of the Constitution. Schuyler

* Washington wrote, "their strength, as well as that of those of the same class in other States, seems to lie in misrepresentation, and a desire to inflame the passions, and alarm the fears by noisy declamation, rather than to convince the understanding by sound arguments, or fair and impartial statements. *Baffled in their attacks upon the Constitution, they have attempted to vilify and debase the characters who formed it, but I trust they will not succeed.*"

resolved, that this attempt to silence the press should be resisted. Hamilton volunteered in its defence, and the suit was abandoned. Soon after the elections for Delegates to the New York Convention were held; and a large majority appeared against the Constitution.

In the city, looking to the chance of carrying the election, in opposition to the Constitution, Aaron Burr, who had been contemplated as a candidate, and was also in view as a member of the State Convention, in case a Convention were called, deterred by the influence Hamilton had obtained, withdrew his name. Governor Clinton, Colonels Lamb, Willet, and Melanchthon Smith, were named as Delegates for the city, to the State Convention; but, as the period of election approached, seeing their defeat inevitable, they also withdrew. Clinton was then elected in Ulster County, and Smith chosen in Dutchess.

Previous to this election, a great riot occurred in the city of New York, the duration whereof shows the weakness of the municipal authority. The people had been incensed at the indecent exposure of bodies, recently disinterred for anatomical purposes. They rose and pursued the physicians, who were confined to a prison by the magistracy, as the only place of security. The rioters, known as the "Doctors' Mob," determined to force the jail. Hamilton placed himself at the head of a body of citizens, and suppressed the tumult. He nevertheless sympathized with the sensibilities of the people, calling it, in private, a righteous mob.*

Eight States had adopted the Constitution, three of

* In Life of Jay i. 261. The discontinuance of Mr. Jay's contributions to "the Federalist" is ascribed to an injury suffered by him during this riot. This would seem to be an error, as the last number but one of those ascribed to Mr. Jay, was published in *November*, 1787. The "Doctors' Mob" did not take place until *April* 13*th* and 14*th*, 1788.

them were planting States. Would Virginia, the most populous member of the league, holding in her wide embrace a vast domain, and believed to lead in her train the State of North Carolina, concur in this great measure? or, placing herself as a counterpoise to Massachusetts, would she, misled by her ambition, endeavor to form a new dependent confederacy? This was a question of intense solicitude to every friend of the Union.

From her geographical position, few of the large States had stronger motives to establish a National Government. Accessible from the ocean, by numerous estuaries, to maritime inroads, without a maritime force to repel them; almost separated from her interior by a belt of mountains, nearly a hundred miles in width; this large interior, which, as it stretched toward the Mississippi, swelled her pride; though, it promised future greatness, was a source of present weakness. For, within its glens and valleys, she had nurtured populous tribes of Indians, skilled in and fond of war, whom she had in vain sought to subdue; and whose hostility was supposed to be fomented by Spain, claiming the exclusive navigation of the great river of the West, wedded to her possessions, jealous of intrusion, hating the growth of a popular government. Thus, in war, no State was more vulnerable. In peace, her prosperity rested upon an advantageous market for her staples, the chief of them, a mere luxury, easily dispensed with—not difficultly supplied; and upon the development of her great natural resources by an equal and mutual interchange of her products with the other States.

The character of her population precluded an adapting change in the objects of their labor. Her efforts to work her mines had not been rewarded. Her laws to encourage manufactures had been unsuccessful; and she was compelled to rely for fabrics of primary necessity, upon foreign industry.

Her people, though chiefly, were not solely of English descent. In the central valley of the State, were a body of untaught Germans. At the falls of the James, a few kindly-welcomed Huguenots. At the feet of her mountains, were the Scotch Irish—a persevering, independent, intelligent race; while the seaboard, and the borders of its inflowing waters, were occupied by the progeny of the original settlers. Of these, the first,* as is usual in colonies not military, were mere adventurers, transported thither by a chartered company; little suited to their new condition; reinforced by a few of another class, allied to members of the company, "who were men of quality and fortune," † followed by others, accustomed to labor. The few obtained early grants, chiefly of the rich soil lying along the rivers; other, later, of extensive inlands. Property was thus held in large masses; much of it, under the culture of slaves introduced soon after the settlement. These masses were continued by the English laws of primogeniture and entails, which were in force to the end of her colonial existence.

The power, anterior to the Revolution, resided in families; whose possessions, education, and habits had given them a commanding influence; of a demeanor most kind and courteous—of an abounding hospitality—profuse in their expenditure—looking down with disdain on the pursuits of commerce, in the hands of a few foreign agents of foreign capitalists—the creditors of men, who, always needing credit, seemed incapable of learning its true value.‡

* 1606.

† These views of Virginia are derived chiefly from the "Westover Papers, by Colonel Byrd"—a member of the Colonial Council, and from Jefferson's works.—Westover Papers, p. 2.

‡ Ibid. Colonel Byrd writes,—"English merchants easily find out means

By birth and education, attached to the Church of England, they made its establishment an affair of State; gave to its clergy a legal provision, and fenced it in, by imposing on dissent severest penalties. The Papist and the Quaker were both outlawed. There were no free schools, and printing for a time was subject to a license. As a consequence, the inhabitants below the gentry were grossly illiterate,—easily influenced. They were either small cultivators, frequently of leaseholds, or dependent whites—shopmen a few, and many slaves. There was no intermediate body of manly artificers. The mechanic arts were little practised. It was a community, in which the idea of wages, that great measure of value, and important element of wealth, was almost unknown. The more ready the many were to follow, the greater would be the disposition of the few to lead; and, in no part of this country, has the lead of the few been more absolute, or longer continued. The Colonial Planters felt their importance; and, though warmly attached to the Crown, this sense of individual power rendered them more alive to its encroachments, and imparted a higher value to their political and social rights. The charter Government of this Colony had little regard, in its organization, to the rights of the colonists; for all its powers were in a Council resident in England, appointed and governed by the King. This would not long be submitted to, in quiet. The colonists yearned for a local representation chosen by themselves; and, yielding to their wishes, the Home Council sanctioned the existence of such a body, in which, together with a Governor and Council appointed by the paramount Council, the Government was reposed, its acts subject to the ratification

to *inflame* the accounts. Just like the bald eagle, which, after the fishing hawk has been at great pains to catch a fish, pounces upon and takes it."

of the Chartered company. This soon gave place to a Royal Government, composed of a Governor and twelve Counsellors. Discontent and resistance followed; until, at last, the people were authorized to choose Representatives, who, with the Governor and Council, were invested with legislative power; and that of establishing a judiciary, who were governed by the common law of England, its imperial statutes affecting the Colony, and its local enactments.

This Colony had only existed half a century, when its Assembly, rejecting the distinction, elsewhere assented to, between external and internal legislation by Parliament, claimed the right to regulate its own trade, and asserted that of a free trade with all mankind. This became the common opinion, and the Revolution opened upon a people prepared to affirm its principles to the fullest extent.

Such enlarged views ought to have produced a liberal warmth and fellowship with the other Colonies, but, though acting in concert for a common object, it was not so. The religious prejudices brought from the mother country, were long nurtured on their lonely plantations. The New Englanders were spoken of, as, "a puritanical sect, with pharisaical peculiarities in their worship and behavior."* Trade was an unfit calling, and a trade eluding laws, though pronounced void, was justly regarded as demoralizing. Such, they charged, was much of the trade of the Eastern provinces. The dwellers of New York had not more favor. The Dutch were also traders—a "slippery people"†—intruders on Virginia—encroachers and reformers. New Jersey,‡ in a religious aspect, was not less obnoxious; peopled by "a swarm of Scots Quakers, who were not tolerated to exercise the gifts of the spirit in their own country"—by "Anabap-

* Westover Papers, p. 4. † Ibid. 5. ‡ Ibid. 6.

tists," too, and some "Swedes." The merits of Penn were equivocal—he was not immaculate; but, though "Quakers had flocked to Pennsylvania in shoals," they had the virtues of "diligence and frugality," and the "prudence" which became non-combatants.* Maryland was a commodious retreat for Papists, for whom "England was too hot,"† and to whom, as a neighbor, Virginia was a little cold. The Carolinas, left "derelict by the French and Spaniards"—were the regions of pines and serpents—dismal in their swamps, and deadly in their malaria. Thus, in the eyes of her favored few, Virginia was the paradise of the New World.

When the Revolution began, her men of high mettle joined the army—the more peaceful talent sought civil distinctions. New men seized the helm. Acts were passed, putting an end to primogeniture and entails, as was said, "to make an opening for the aristocracy of virtue and talent."‡ The laws for the support of the clergy, and punishing dissent, were also repealed, "to abolish this spiritual tyranny."

Thus, distinctions of family, of fortune, of station, of opinion were merged—for a time; and all were borne along by the impulsive genius of Patrick Henry, or soothed and swayed by the ductile arts of Jefferson. But the period of excitement and of danger passed; and the landed aristocracy still held their sway, for the laws to break it up required time for their operation. A new direction was given to their ambition.

For the pride of Virginia, as a Colony, her pride as a State, was to be flattered. The new leaders seized upon the dominant feeling, and carried it with them. While, they proclaimed resistance to the oppression of England;

* Westover Papers, 6. † Ibid. 7. ‡ Jefferson's Works, i. 80, 82.

they insisted, that Virginia was the first to resist—that Virginia ought to lead—that Virginia must govern.

Their recent political institutions marked the course and influence of the past. The House of Burgesses had fought the civil battles of the Colony with the Governors, appointed by the Crown; and "the Counsellors of State had been habitually selected by the King from the Patrician order." It was deemed a sufficient change of Government, that this Governor, and these Counsellors, should be elected by this House of Burgesses. Thus, all that was desired was accomplished. These Burgesses were still elected by freeholders.

Though, in theory, republican; in practice, this State was not one, but a composition of numerous oligarchies.* Its Constitution, while it professed to vest all power in the Legislature, as the immediate delegates of the people, reposed much of it in her County Judicatories—each of which was the source of patronage, and the avenue to preferment. Hence resulted, local feelings and local influences. Here, grew up a constant succession of small great men, jealous of their own importance—but careful not to offend the many; hostile to enlarged views of National or State policy; and exacting implicit deference from their superiors. Above them, soared minds of high and palmy vigor; but it was a vigor exerted under an ever-present sense of dependence upon inferiors, they could neither control nor disregard; and, with a few rare and elevated exceptions, her public men are seen, bowing and bending before the popular breeze. To this fact may be ascribed her unequal contributions to the general cause, in the greatest emergencies, previously stated, and justly, and often, censured by her more eminent citizens.†

* Jefferson's "Notes on Virginia."

† Colonel Grayson, afterwards one of her Senators, thus wrote to General

Although the incidents of the Revolution had taught Virginia her weakness; though the dangers of anarchy and of civil war were before her, still this unsocial pride of State was cherished. To be an American citizen, was a secondary boast to that of being a child of the "Old Dominion;" and the sense of great public interests seems, for a time, to have sunk under the doubt, whether, if Virginia should adopt the Constitution, she was to shine, as a primary, controlling orb; or to revolve, restrained by the general laws of the new system. Political ambition concurred with private interests in obstructing her onward steps. Of the large planters, a minority—and that not small, shrank from a collision with the democratic principles of New England, to be brought into action through the medium of a government with National laws, expounded by a National Judiciary, and enforced by the National arm. The equalizing policy of the East, not differing in theory from their own recent legislation; in practice, shocked their prejudices. It seemed to expose to hazard their personal independence, and personal superiority, which they esteemed, as the choicest of blessings. The canker of debt deferred, with accumulated arrears of interest, had eaten deeply.* It was a disease that winced at the knife. Under the new Con-

Smallwood, June 26, 1780:—"The rejection of the Resolution of Congress respecting finance, was a fatal stab to the independence of America. If Virginia does not rescind her determination, we are all undone. Her persisting in the idea, will not only deprive herself of resources, but the whole Continent! ! This, added to her Kentucky policy, and her want of exertion in affording assistance to South Carolina, will place her in a very disagreeable point of view with respect to the other States."

* These debts, of nearly ten millions of dollars, had become hereditary from father to son, of many generations; so that, the planters were "a species of property annexed to certain mercantile houses in London."—Jefferson. The debts claimed against Virginia, under the treaty with England, amounted to $8,500,000.

stitution, State laws could no longer defer their collection. The titles to large tracts of territory were questionable. These were subjects of interested anxiety. By the indebted and the speculative, an insolated immunity would be preferred. A strenuous party of opposition was also found in the inhabitants of the far frontier, averse to government—the back-woodsmen of the Kanawha and the Kentucky; whose reading was in the Almanac; whose arbiter, the rifle; upon whose ears the Sabbath bell never broke; whose traditions, and whose memories, were all of early hardships, and of border strifes. So broad a mass of opposition, the politicians, many of them, were unwilling to encounter, in behalf of a government, which, as it arose in the scale of political importance, they felt, they must sink. Even of those most favorable, some had not dared openly to initiate it;* and others, failing to establish a system, analogous to that of Virginia, wavered in their support. Calmer, less interested men, looked doubtfully on the novel, complicated scheme; and the words "Monarchy"—"limited Monarchy," were heard to escape their murmuring lips.

Disappointed in his effort to introduce the Virginia model, Randolph for a time disclaimed the Constitution. Madison wisely and ably sustained it. A circumstance which may well be supposed to have attracted Virginian support to the new Government, ought not to be overlooked—the fact, that it came recommended by the signature of Washington; and, that he was, by almost universal expectation, looked to, as the President.

* Madison states, how truly cannot be ascertained, that the resolve of Virginia, to call a Convention at Annapolis, was prepared by him, but introduced by Mr. Tyler, because of his (Madison's) known wish for an enlargement of the powers of Congress.—Curtis's History of the Constitution. Note to page 426, vol. i.

But, this very expectation had kindled an opposition to it. In the brief narrative of the Cabal, the names of the more prominent of his opponents are recorded. Many of the same names are to be found in opposition to the Constitution—a lamentable evidence of the influence of personal feeling, at a period, when every other bias ought to have been merged in love of country. Nor was this opposition restrained within very nice bounds.

Yet, much confidence of success existed among its advocates. Washington writes, a fortnight previous to the time appointed for the meeting of the Convention: "Since the elections in this State, little doubt is entertained of the adoption of the proposed Constitution with us, if no mistake has been made with respect to the sentiments of the Kentucky members. The opponents to it, I am informed, are now also of this opinion. Their grand manœuvres were exhibited at the elections, and some of them, if reports be true, were not much to their credit. Failing in their attempt to exclude the friends of the new Government from the Convention, and baffled in their exertions to effect an adjournment in Maryland, they have become more passive of late."*

The Convention of Virginia met at Richmond, on the second of June. It selected Judge Edmund Pendleton, President, a gentleman who, at different periods of his life, entertained opposite opinions. Having determined to consider the Constitution in detail, a proposition was made by Patrick Henry, the leader of the hostile party, having for its object, an examination of the powers of the delegates to the Federal Convention. Pendleton opposed this motion. It was withdrawn, and the discussion commenced, after reading the preamble, and the sections of the first article, constituting the House of Representatives.

* Washington's Writings, ix. 367.

It is merely necessary, in order to show the feelings of Virginia, to advert to the objections taken against that part of the Constitution. These were: The want of landed qualifications in the Representatives; an objection met by the observation, that, as the electors generally were attached to the landed interest, that interest must prevail; and, that in no one district the mercantile interest could have an equal weight in the elections—the control over the elections vested in Congress—the small number of the Representatives—their term of service—and their powers.

Patrick Henry declaimed loudly: "I conceive the Republic to be in extreme danger—whence has arisen this fearful jeopardy? It arises from this fatal system, this proposal to change our government—a proposal that goes to the utter annihilation of the most solemn engagements of the States—a proposal of establishing nine States into a confederacy, to the eventual exclusion of four. It goes to the annihilation of those solemn treaties we have formed with foreign nations." On this last topic he enlarged, as though all treaties were necessarily abrogated by a change of government, or could, on any principle, preclude such change, however dictated by the public welfare.

He denounced the plan, as establishing a consolidated Government; and demanded, "who authorized the Convention to speak the language, 'We, the people,' instead of 'We, the States?' Even, from that illustrious man, who saved us by his valor, I would have a reason for his conduct. The people gave them no power to use their name. Here, no dangers, no insurrection has happened —every thing has been calm and tranquil. But, notwithstanding this, we are wandering on the great ocean of human affairs. I see no landmark to guide us. We are

running, we know not whither." He deprecated "this perilous innovation."

Governor Randolph was next in the debate. It has been seen, that he had been recently re-elected Governor, and that pending the election, and some time subsequent to it, he was opposed to the Constitution.

It is a pregnant fact, that Samuel Adams, George Clinton, and Edmund Randolph, chief among the adversaries of the Constitution, were all Governors of States; and these, three of the four leading States in the Union. After the intelligence was received of the ratification by Massachusetts, his purpose changed.' This change was not concealed, and had much weight with his followers. In his opening remarks, having replied to Henry, as to the powers of the delegates to the Federal Convention, he stated his adherence to his opinion of the necessity of amendments; quoted the recommendation of them by Massachusetts, and referred to the manner in which the subject had been propounded by the Legislature to the Convention, as obviating some of his objections. He then declared, that the necessary lapse of time would prevent the adoption of previous amendments; that, to insist upon them, would dissolve the Union—"the anchor of our Political Salvation."

Mason urged the impracticability of establishing a General Government over so extensive a territory, with powers so limited, as to be consistent with liberty; deprecated the dangers of the form proposed, dwelling chiefly on the power of collecting taxes. This power, he asserted, changed the Confederation of the States into a consolidation, and would annihilate the State Governments. "Will the people submit to be individually taxed by two different and distinct powers? These two concurrent powers cannot long exist together. The one will

destroy the other. The General Government will be paramount. The plan was without a parallel. The representation was defective. The remedy was to be found in previous amendments. Madison met these suggestions with a brief statement of the restrictive checks in the Constitution. Judge Pendleton and Colonel Lee also defended the plan, and were opposed by Patrick Henry, in an elaborate and highly wrought appeal to the jealousies and passions of the Convention. Randolph, Madison, Nicholas, and Corbin, rose in succession to remove the impressions of his eloquence. Randolph dwelt chiefly on the particular interests of Virginia—her exposed situation —her strife with Maryland—and the necessity of a vigorous General Government to their internal quiet, and as a protection against foreign dangers, insisting upon the necessity of a general military force—land and naval. The Constitution, he declared, is essential in its strength, and, as the laws will be made by the assent of the people, the Government is free. Nor did he see, that extent of country ought to be a bar to the adoption of a good Government. Madison confined himself to a closer reply to the objections to the Constitution. He pointed to the fact, that an amendment of the articles of the Confederation, required the unanimous concurrence of the States; that one State had successively resisted every attempt to improve the system; that the rights of a great majority were thus subjected to a trifling minority; that this evil was met by the provisions of the Federal Government. He defended the power over the militia, and that of raising and supporting standing armies. In proof of the absolute necessity of such forces, he adverted to important facts—the relinquishment of territorial advantages during the Revolution, to obtain the acquisition of one ally; and the authorized cessions, to obtain another. He denied,

that the new system would produce an uniformity of religion, religious opinions being left free and unshackled. The fiscal powers of the new Government he fully approved; for the nature of it excluded all danger from this source. It is of a mixed nature, and, in a manner, unprecedented. In some respects, it is federal; in others, consolidated. Its ratification is made the act of the people of America. Who are parties to it? The people,—but not the people, as composing one great body; but the people, as composing thirteen Sovereignties. It is derived from the superior power of the people. Their Representatives in one house, chosen by the people; the Senate, by the States. Thus its complication will alike exclude the evils of absolute consolidation, as those of a mere confederacy. He denied the alleged danger of its absorbing the State Governments. If wholly independent of them, usurpation might be expected. But this is not so. Its authority is derived from the same sources whence their authority is derived. "I wish," he observed, at the close of this able speech, "this Government may answer the expectations of its friends, and foil the apprehensions of its enemies. I hope the patriotism of the people will continue, and be a sufficient guard to their liberties. I believe, *its tendency will be, that the State Governments will counteract the general interest and ultimately prevail.*" *

In an earnest appeal to Patrick Henry, Corbin following Nicholas, depicted the distress of the country, vindicated the Constitution, and portrayed the consequences of insisting, in order to gratify mere theoretic doubts, on

* Bushrod Washington to General Washington, June 6th: "Madison followed, and with such force of reasoning, and a display of such irresistible truths, that opposition seemed to have quitted the field." Washington's Writings, ix. 378 note.

previous amendments. After many pointed remarks, Patrick Henry replied: "To me it appears, that there is no check in that Government. The President, Senators, and Representatives, all immediately or mediately, are the choice of the people. Tell me not of checks on paper, but tell me of checks founded on self-love. This powerful, irresistible stimulus of self-love, has saved the Government of England. It has interposed an hereditary nobility between the King and Commons. If the House of Lords assists or permits the King to overturn the liberties of the people, the same tyranny will destroy them. They will therefore keep the balance in the democratic branch. Suppose, they see the Commons encroach upon the King; self-love, that great, energetic check, will call upon them to interpose; for, if the King be destroyed, their destruction must speedily follow. This is a consideration which prevails in my mind, to pronounce the British Government superior, in this respect, to any Government that ever was in any country. Compare this with your Congressional checks. .... Have you a resting-place like the British Government? Where are your checks? You have no hereditary nobility—an order of men to whom human eyes can be cast up for relief. In it, there are real balances and checks. In this system, there are only ideal balances. Till I am convinced, that there are actual efficient checks, I will not give my assent to its establishment. The President and Senators have nothing to lose. They have not that interest in the preservation of the Government, that the King and Lords have in England. They will therefore be regardless of the interests of the people."

Colonel Lee, and Randolph, having defended it, were followed by James Monroe, in opposition to the Constitution. After pointing out the difference between the Con-

federation and other leagues, and denying the danger from internal dissensions, he compared the Confederation with the Constitution. Admitting defects in both, he proposed to add to the Confederation one power, only—"an absolute control over commerce,"—to take from the Constitution "one power, only"—that of direct taxation—as unnecessary, "because exigencies will not require it," and impracticable, because of the extent of territory, and of the inequality of its operation. The tendency, he declared, would be to a Monarchy. That it had no real checks; that "the wisdom of the British Constitution had given a share of legislation to each of the three branches, which enables it to defend itself, and preserves the liberty of the people." "Upon reviewing this Government," he closed, "I must say, under my present impression, I think it a dangerous Government; and calculated to secure neither the interests nor the rights of our countrymen. Under such a one, I shall be averse to embark the best hopes and prospects of a free people." * These observations serve to show the state of feeling in Virginia.

John Marshall replied—"The supporters of the Constitution claim the title of being firm friends of the liberty and rights of mankind. They say, that they consider it the best means of protecting liberty. We idolize Democracy. Those who oppose it, have bestowed eulogiums on Monarchy. We prefer this system to any monarchy, because we are convinced, that it has a greater tendency to secure our liberty and promote our happiness. We admire it, because we think it is a well regulated Democra-

* Monroe writes at this time: "I should consider the *abolition of the State Legislature as a most fortunate event for America.*" . . . . "Upon the whole, it results, that, although I am for a change, and a radical one—of the Confederation—yet I have some strong and invincible objections to that proposed to be substituted in its stead."

cy." "What are its favorite maxims? A strict observance of justice and public faith, and a steady adherence to virtue. Have such been the effects of the Confederation? As to the Mississippi, how shall we retain it? By retaining that weak Government which has hitherto kept it from us? Give the Government the power of retaining it, and then we may hope to derive actual advantages from it. You cannot exercise the power of Government, personally, yourselves. You must trust agents. If you repose no confidence in them, because there is a possibility of abusing it, you can have no Government; for the power of doing good is inseparable from the power of doing evil." He drew a strong lesson from the history of Holland; insisted on the power of taxation, and pointed to the danger of conferring extraordinary powers, in moments of alarm, instead of confiding them to be duly executed—and steadily, systematically, guardedly, checked. On these checks, he strongly dwelt. Various other topics were dilated upon, giving evidence, that his was far the superior mind of that intelligent body. The previous day, on the ninth of June, Madison wrote to Hamilton,—"The chance, at present, seems to be in our favor; but it is possible, things may take another turn. Oswald, of Philadelphia, came here on Saturday; and has closet interviews with the leaders of the opposition." On the sixteenth of the same month, he again wrote,—"Yours of the eighth has just come to hand. I mentioned in my last, that Oswald had been here in consultation with the Anti-Federal leaders. The contents of your letter confirm the idea, that a negotiation for delay is on foot between the opposition here, and with you. We have conjectured for some days, that the policy is to spin out the session, in order to receive overtures from your Convention; or, if that cannot be, to weary the members into an

adjournment, without taking any decision. It is presumed, at the same time, that they do not despair of carrying the point of previous amendments, which is preferable game. The parties continue to be nicely balanced. If we have a majority at all, it does not exceed three or four. If we lose it, Kentucky will be the cause. They are generally, if not unanimously, against us."

This letter enclosed one from Colonel Henry Lee to Hamilton, saying, "God bless you, and your efforts to save me from the manifold misfortunes which have and continue to oppress me, whenever I attempt to aid human nature. You will do what you think best, and whatever you do, I will confirm. . . . . Our Convention is in full debate on the great business of the Federal Constitution. We possess, as yet, in defiance of great overtures, a majority, but very small, indeed. A correspondence has certainly been opened through a Mr. O., of Philadelphia, from the malcontents of Pennsylvania and New York. It has its operation, but I believe, we are still safe, unless the question of adjournment be introduced." Madison now explained, in a lucid speech, the fiscal powers of the Constitution, and again declared—"There will be an irresistible bias towards the State Governments. I have my fears, as well as the honorable gentlemen. But my fears are on the other side. Experience, I think, will prove that the powerful and prevailing influence of the States will produce such attention to local considerations, as will be inconsistent with the advancement of the interests of the Union." Grayson disapproved the system. "I would not," he said, "take the British Government as a model. We have not materials for such a Government—but I would have a President for life, choosing his successor at the same time; a Senate for life, with the powers of the House of Lords; and a biennial House of

Representatives, with the powers of the House of Commons in England."

An incidental topic was at this time introduced to bear upon the delegation from Kentucky—the negotiations which had taken place respecting the navigation of the Mississippi. Differing statements were made. The danger of closing this great outlet of the West was dwelt upon. The conduct of Massachusetts, on that subject, was attributed to a desire to prevent emigration, and to retain her political preponderance. After many intimations of danger, that the Constitution would confer the power of surrendering this essential right,—the fears which had been aroused, were, in a measure, quieted.

The control of the Navy given to the General Government, was warmly deprecated, for the reason, that it must, of necessity, be in the hands of the Northern States. Nor was that over the Militia less earnestly censured. This objection was examined with marked precision by Madison and by Marshall.

The sweeping clause, as it was called, gave rise to a more vehement opposition. The clause prohibiting the slave trade was also disapproved. It is honorable to Virginia, that her repugnance was to the temporary permission of its continuance, not to the restriction, on this detestable traffic. The provisions as to the Treaty power were also condemned. These were defended by Corbin and Madison. Each showed the advantage of vesting it where it was placed. Each sustained it by assumed qualifications on this power, showing more refinement, than accuracy. The necessity of Legislative interference was, by the former, too readily admitted. The supremacy of Treaties was, by the latter, limited to State laws, but denied over those of Congress—a limitation, inconsistent with the necessary sacredness and binding

force of treaty obligations with foreign, independent nations.

It was the policy of the Anti-Federalists to procrastinate, in the hope, that the intelligence from New Hampshire would be unfavorable to the Constitution. They were disappointed. Although the result was not ascertained, the impression grew, that she would follow the example of Massachusetts. They also ascertained, that their impassioned addresses to the Western delegates, had failed of their intended effect. Under these circumstances, the opposition rallied in all their strength against the Judiciary department. It presented topics for declamation, which were supposed to have a peculiar influence on the policy of Virginia. That State had, recently, under the influence of Henry, passed an act to suspend the collection of debts due to British subjects, until the surrender of the Posts—both, being objects secured by the Treaty of Peace. It was alleged, that by the Constitution of the United States, the jurisdiction which was given in these cases, would transfer the suit from the fireside of the debtor to a remote and foreign Judicature; a consequence of the system, pronounced dangerous to the citizens of the State—derogatory to the character of its Judiciary. A large tract of country was held under confiscations, by an act of the State Legislature, passed subsequent to the Treaty of Peace. The validity of these confiscations might be questioned before the Federal Court. Other claims involving extensive possessions, were subject to a like interference.*

* Madison writes to Washington, "In Virginia, British debts, the Indiana claim, and the Mississippi, are the principal topics of private discussion and intrigue, as well as of public declamation."—June 13, 1788. Also to Hamilton,—"If we lose it, Kentucky will be the cause. They are generally, if not unanimously, against us."

All these claims, before the Courts, if they succeed, will, it was said, "introduce a scene of distress and confusion before unheard of. Our peasants will be reduced to ruin and misery—driven from their farms, and obliged to leave their country." The independence of the State was also declared to be in jeopardy.

"The appellate cognizance of fact and an extension of power to causes between citizens of different States, with some lesser objections, were chiefly dwelt upon. If we can weather the storm against the part under consideration, I shall hold the danger to be pretty well over," Madison wrote to Hamilton. He combated these objections with signal skill, and was ably sustained by Marshall, who taking a large view of the judicial powers, and showing the necessity of their being conferred, controverted, conclusively, the allegation, that juries in civil cases would be excluded,—a suggestion which, more than any other, had alarmed the popular feeling.

A letter from Madison to Hamilton, shows the position of parties at this time.* "The judiciary department has been on the anvil for several days; and, I presume, will still be a further subject of disquisition. The attacks upon it have apparently made less impression than was feared. But they may be secretly felt by particular interests, that would not make the acknowledgment; and would choose to ground their vote against the Constitution, on other motives. In the course of this week, we hope for a close of the business in some form or other. The opponents will probably bring forward a bill of Rights, with sundry other amendments, as conditions of ratification. Should these fail, or be despaired of, an adjournment will, I think, be attempted; and in case of disappointment here also, some predict a secession. I do not myself concur in the

* June 22d, 1788.

last apprehension, though I have thought it prudent to withhold, by a studied fairness, in every step on the side of the Constitution, every pretext for rash experiments. The plan meditated by the friends of the Constitution, is to preface the ratification, with some plain and general truths, that cannot affect the validity of the act; and to subjoin a recommendation, which may hold up amendments, as objects to be pursued in the Constitutional mode.

"These expedients are rendered prudent by the nice balance of numbers, and the scruples entertained by some, who are, in general, well affected. Whether they will secure us a majority, I dare not positively to declare. Our calculations promise us success by three or four, or possibly five or six votes. But was there no possibility of mistaking the opinions of some, in receiving those of so many; the smallness of the majority suggests the danger from ordinary casualties, which may vary the result. It unluckily happens, that our Legislature, which meets at this place to-morrow, consists of a considerable majority of Anti-Federal members. This, is another circumstance that ought to check our confidence. As individuals, they may have some influence; and, as coming immediately from the people, at large, they can give any color they please to the popular sentiments, at this moment; and may, in that mode, throw a bias on the Representatives of the people in Convention."

Two days after the date of this letter, the other articles of the Constitution having been very briefly discussed, Chancellor Wythe proposed a ratification, prefaced, with "a few plain and general truths."

Henry, in the course of an impassioned speech, moved a substitute, containing an elaborate declaration of Rights, and voluminous amendments, "to be proposed to the other States in the confederacy for their consideration, previous

to its ratification."* This proposition was zealously opposed by Randolph and Madison.

It has been seen, that, unwilling to incur the odium of an absolute rejection of the Constitution, its opponents had resolved to insist upon previous amendments, with a view, as they alleged, to a second General Convention. In support of their policy, they quoted a remarkable letter from the American Ambassador at Paris. In this letter, Jefferson expresses a wish, "that the nine first Conventions may accept the Constitution, because it will secure to us the good it contains, which I think great and important. I wish the four latest, whichever they be, may refuse to accede to it, till a declaration of Rights be annexed."* He then enumerates the amendments which he wished secured, and adds: "We must take care, however, that neither this, nor any other objection to the new form, produce a schism in our Union. That would be an incurable evil, because, near friends falling out, never reunite cordially. †

* Washington wrote, 10th November, 1787. "Let the opponents of the proposed Constitution in this State be asked—and it is a question they certainly ought to have asked themselves—what line of conduct would they advise it to adopt, if nine other States, of which there is little doubt, should accede to the Constitution? Would they recommend, that it should stand single? Will they connect it with Rhode Island? or even with two others, checkerwise; and remain with them as outcasts from the society to shift for themselves, or will they return to their dependence on Great Britain; or lastly, have the mortification to come in, when they will be allowed no credit for doing so?"—ix. p. 278, Washington's Writings.

So also—28 Ap. 1788—he wrote, as to requiring "*a Bill of Rights*" and a provision for "*trial by Jury:*" "The first where the people evidently retained every thing, which they did not in terms give up, was considered nugatory, as you will find to have been more fully explained by Mr. Wilson and others; and, as to the second, it was only the difficulty of establishing a mode which should not interfere with the fixed modes of any of the States, that induced this Convention to leave it as a matter of future adjustment."—ix. *ibid.* 357.

† Jefferson's Works, in a letter, dated February 7th, 1788, at Paris, addressed to Donald. From one to Carmichael of the 11th of December pre-

This opinion of Jefferson, it was sought to interpret in favor of adoption; but Patrick Henry insisted, that such was not its intent. "If we pursue his advice," Henry asked, "what are we to do? To prefer form to substance? For, give me leave to ask, what is the substantial part of his counsel? It is, that four States should reject." This extraordinary letter, which placed the action of a State, on so vital a question, upon a mere numerical contingency, whether it should be the ninth or the tenth; which overlooked the possibility of two or more Conventions being in Session at the same time, and, if this advice was followed, that both States might dissent, and the Constitution would be lost; or both might adopt, and the amendments would fail, greatly alarmed the friends of the Constitution. Madison deprecated the introduction of the name of Jefferson—and asked, "Has it come to this then —that we are not to follow our own reason? Is it proper to introduce the opinions of respectable men not within these walls? If the opinion of an important character were to weigh on this occasion—could we not adduce a character equally great on our side?" This letter of Jefferson had, nevertheless, worked on the minds of the Convention; and in their closing speeches, Randolph and Madison labored to remove its impression. "Let," said the Governor of the State, "Let gentlemen seriously ponder the calamitous consequences of dissolving the Union in our present

vious, it is evident that it was written, when the fate of the Constitution was uncertain. After summing up the prospect in other States, he remarks: "as to Virginia, two of the Delegates in the first place refused to sign it, these were Randolph, the Governor, and George Mason; besides these, Henry, Harrison, Nelson, and the Lees, are against it. General Washington will be for it, *but it is not in his character to exert himself much in the case!*

"Madison will be its main pillar, but though an immensely powerful one, it is questionable, whether he can bear the weight of such a host—*so that the presumption is, that Virginia will reject.*"

situation, I appeal to the great Searcher of hearts, on this occasion, that I behold the greatest danger that ever happened, hanging over us—for, previous amendments, are, but another name for rejection. I ask you, if it be not better to adopt, and run the chance of amending it hereafter, than run the risk of endangering the Union. The Confederation is gone. It has no authority. If, in this situation, we reject the Constitution—the Union will be dissolved, the dogs of war will break loose, and anarchy and discord will complete the ruin of this country."

Madison, after commenting on the extraordinary spectacle exhibited in America, of its free inhabitants deliberating on a form of Government, and selecting such of their citizens as possess their confidence, to determine upon and give effect to it, remarked: "I beg that, gentlemen in deliberating on this subject, would consider the alternative—either nine States shall have ratified it, or they will not. If nine States will adopt it, can it be reasonably presumed or required, that nine States, having freely and fully considered the subject, and come to an affirmative decision, will, upon the demand of a single State, agree, that they acted wrong, and could not see its defects; tread back the steps they have taken, and reduce it to uncertainty, whether a general system shall be adopted, or not? It is a most awful thing that depends upon our decision—whether, the thirteen States shall unite freely, peaceably, and unanimously, for the security of their common happiness and liberty—or, whether, every thing is to be put in confusion and disorder? Should only eight States ratify, and Virginia propose certain alterations, as the previous condition of her acceptance, every State which has decided must reconsider the subject, acknowledge its error, and appoint a new Convention to deliberate. Will not every State think herself

equally entitled to propose as many amendments? If contradictory, will they probably agree—or agree in any thing, but the plan before us? New York has been adduced. Two of the delegates from that State opposed every step of this system. Can it be supposed, that those in this State, who admit the necessity of a change, would ever unite with those totally averse to any change? In this mode of securing alterations (by subsequent amendments), there is no friend to the Constitution but will concur."

James Monroe thought differently. He declared, he could not conceive, that a conditional ratification, would, in the most remote degree, endanger the Union; for, it was as clearly the interest of the adopting States to be united with Virginia, as it could be her interest to be, in union with them.

In the hope of thus influencing the decisions of other States, Hamilton had arranged a line of expresses with Generals Sullivan and Knox—to bear intelligence of the ratification by New Hampshire. An express arrived in New York on the twenty-fifth of June, and the result was announced to Congress.

Colonel Henley pressed on with it to Richmond. The intelligence reached Alexandria on the twenty-eighth, where its citizens were convened to celebrate the adoption by Virginia; which State, by a majority of ten of one hundred and sixty-eight votes, had ratified the Constitution, two days before.

"The day itself," Washington writes, on the twenty-eighth, "is memorable for more reasons than one. It was recollected, that this day is the anniversary of the battles of Sullivan's Island, and Monmouth. I have just returned from assisting at the entertainment, and mention these details, unimportant as they are in themselves, the rather,

because, I think, we may rationally indulge the pleasing hope, that the Union will now be established upon a durable basis; and that, Providence seems still disposed to favor the members of it with unequalled opportunities for political happiness."*

* On the 27th of June, Madison wrote to Hamilton: "This day put an end to the existence of our Convention. The enclosed is a copy of the act of ratification. It has been followed by a number of recommendatory alterations—many of them highly objectionable. One of the most so, is an article prohibiting direct taxes, when effectual laws shall be passed by the States for the purpose. The minority will sign an address to the people. The genius of it is unknown to me. It is mentioned, as an exhortation to acquiescence in the result of the Convention. Notwithstanding the fair professions made by some, I am so uncharitable as to suspect, that the ill will to the Constitution will produce every peaceable effort to disgrace and destroy it. Mr. Henry declared, previous to the final question, that, although he should submit as a quiet citizen, he should wait with impatience for the favorable moment of regaining in a *constitutional way* the lost liberties of his country. My conjecture is, that exertions will be made to engage two-thirds of the Legislature in the task of regularly *undermining* the Government. This hint may not be unworthy your attention. Yours, affectionately." He subsequently wrote, that, "the intended address was rejected by the party themselves, when proposed to them, and produced an auspicious conclusion."

CHAPTER LIII.

During this period, Hamilton frequently attended Congress, then sitting at New York. Its journals give few topics of interest. From these, it appears, that he was of a Committee to make provision for the invalids of the army; that, on the third of June, he reported, that "the District of Kentucke be erected into an Independent State, and the act for its admission into the Union." This measure, with the concurrence of all but one member, was subsequently referred, in consequence of intelligence, that nine States had ratified the Constitution. He was also of a Committee to close the unsettled public accounts.

From this Assembly, scarcely possessed of means sufficient to keep up the forms of Government, Hamilton passed to a new theatre of labor and of triumph—the Convention of New York.

His * correspondence at this time shows his apprehensions of the result. He writes: "Violence, rather than moderation, is to be looked for from the opposite party. Obstinacy seems to be the prevailing trait in the character of its leader. The language is, that if all the other States adopt, this is to persist in refusing the Constitution. It is reduced to a certainty, that Clinton has, in several

* Hamilton's Works, vol. i. 452–454, to Morris and Madison.

conversations, declared the UNION unnecessary." "As Clinton is truly the leader of his party, and is inflexibly obstinate, I count little in overcoming opposition by reason. The Anti-Federal party have a majority of two-thirds in the Convention; and, according to the best estimate I can form, of about four-sevenths of the community. The views of the leaders in this city are pretty well ascertained to be turned towards a *long* adjournment; say, till next spring or summer. Their incautious ones observe, that this will give an opportunity to the State to *see how* the Government works, and to act according to *circumstances*.

"My reasonings on the fact are to this effect: The leaders of the party hostile to the Constitution, are equally hostile to the Union. They are, however, afraid to reject the Constitution, at once, because that step would bring matters to a crisis between this State and the States which had adopted the Constitution; and between the parties in the State. A separation of the southern district from the other parts of the State, it is perceived, would become the object of the Federalists, and of the neighboring States. They, therefore, resolve upon a long adjournment, as the safest and most artful course to effect their final purpose. They suppose, that, when the Government gets into operation, it will be obliged to take some steps in respect to revenue, etc., which will furnish topics of declamation to its enemies in the several States, and will strengthen the minorities. If, any considerable discontent should show itself, they will stand ready to head the opposition. If, on the contrary, the thing should go on smoothly, and the sentiments of our own people should change, they can elect to come into the Union. They, at all events, take the chances of time and the chapter of accidents.

"How far their friends in the country will go with them, I am not able to say; but, as they have always been found very obsequious, we have little reason to calculate upon an uncompliant temper in the present instance. For my own part, the more I can penetrate the views of the Anti-Federal party in this State, the more I dread the consequences of the non-adoption of the Constitution by any of the other States—the more I fear an eventual disunion, and civil war. God grant that Virginia may accede. The example will have a vast influence on our politics. New Hampshire, all accounts give us to expect, will be an assenting State."

The Convention met at Poughkeepsie, on the seventeenth of June. The thirteen counties of the State were represented by sixty-five delegates, of whom forty-six were elected by the party hostile to the Constitution; *nineteen* by its friends. Governor Clinton, a deputy from Ulster, was unanimously chosen to preside. Of his party, Robert Yates, the Chief Justice of the State, Melancthon Smith, John Lansing, and Samuel Jones, were the more conspicuous. The leading advocates of the Constitution were Duane, Hamilton, Harrison, Jay, and Livingston, then Chancellor.

The debate was opened by Livingston, with an eloquent sketch of the advantages enjoyed by the American people in forming a national Union; of the effects of the confederation, showing the necessity of a change of government; and, of the peculiar importance of Union to New York, from the nature of her products, and her geographical position.

Having lamented, that this superiority of position had excited an improper confidence, and produced an inflexibility, which had rendered her regardless of the wishes of other States; he described her exposed situation, stated

at large the impracticability of preserving an efficient league, and urged the necessity of establishing a well ordered Government. A resolution was then offered, that no question should be taken on the Constitution, or on any part of it, or on any amendment to it, until each clause had been considered. It was the policy of the Governor to take the vote upon it in mass; that of its friends, to protract the debate, until intelligence should be received from New Hampshire. This resolution was discussed, and prevailed.*

Hamilton now † wrote to Madison: "To-morrow, we go into a Committee of the whole on the Constitution. There is every appearance, that a full discussion will take place, which will keep us together, at least, a fortnight: It is not easy to conjecture, what will be the result. Our adversaries greatly outnumber us. The leaders gave indications of a pretty desperate disposition in private conversations, previous to the meeting: but, I imagine the minor partisans have their scruples; and an air of moderation is now assumed. So far, the thing is not despaired of. A happy issue with you, must have considerable influence upon us."

Clinton writes the same day, mentioning the formation of a Committee, "opposed to the adoption of the new Constitution, without previous amendments;" and observes, "It gives me and them sensible pleasure to learn, that the friends to the liberties of the country to the southward, are equally anxious, with those who are not ashamed of that unfashionable name here. The friends to the rights of mankind, outnumber the advo-

* It is related by a person, then present, that this decision gave great umbrage to Clinton, who, imputing it to Melancthon Smith's confidence in his powers, remarked, with an oath, "that his vanity had lost the State."

† June 21st.

cates of despotism, nearly two to one." He enclosed a letter to Mason, chairman of the Virginia Committee.* Lansing commenced the opposition. He declared, that essential powers might be more safely delegated to the State, than to the General Government; and contended for the practicability of sufficiently amending the Confederation, to enable it to afford defence against foreign aggression and to secure domestic tranquillity; by vesting Congress with power to raise men and money; and, in case its requisitions were disregarded, by permitting it to legislate upon individuals. He denied, that the embarrassments of the country were to be attributed to its political system; but said, they were to be ascribed to other causes. The dangers of a dissolution of the Union, he thought, were less than those of the proposed system. If it should unfortunately ensue, "what," he asked, "have we to apprehend? We are connected both by interest and affection with the New England States. We harbor no animosities against each other—we have no interfering territorial claims—our manners are nearly similar, and are daily assimilating; and mutual advantages will probably prompt to mutual concessions. He, however, contemplated the idea of a possible disunion with pain." Having avowed his conviction, that, a consolidated government could not preserve the essential rights and liberties of the people, he affirmed his purpose to insist upon amendments favorable to civil liberty; and denied, that the opposition sprang from the influence of State office.

The Legislative Department was first considered. Smith stated his objections to the rule of apportionment of the members—that there was no precise number defined, below which, the House could not be reduced, and its present inadequacy. He condemned the three-

* Life of Lamb, 315.

fifths compromise, observing, that slaves had no will; and that it was conferring a privilege on those, who, as their masters, violated morality. The number of the House was discretionary. So small a body was incompetent to take charge of the extensive objects of a National Government; would never possess the confidence of the people, and would raise the few above the many. He then moved, that every twenty thousand persons have one representative, until the whole number amounted to three hundred, after which they should be apportioned among the States according to their population; and that, in the commencement of the Government, double the number prescribed in the Constitution be chosen.

Hamilton then arose.* After alluding to the efforts to ridicule the apprehensions which had been expressed as to the condition of the country, he proceeded to urge the necessity of a NATIONAL Government. "I trust that these observations are not intended to cast a light air on this important subject, or to give any personal bias on the great question before us. I cannot agree with gentlemen who trifle with the weaknesses of our country, and suppose that they are enumerated to answer a party purpose, and to terrify with ideal dangers. No, I believe, these weaknesses to be real, and pregnant with destruction. Yet,

* Chancellor Kent relates: "In his opening speech, Mr. H. preliminarily observed, that it was of the utmost importance that the Convention should be strongly impressed with a conviction of the necessity of the Union of the States. If, they could be entirely satisfied of that great truth, their minds would then be prepared to admit the necessity of a government of similar organization and powers with the scheme of the one before them, to uphold and preserve that Union. It was like the case of the doctrine of the IMMORTALITY OF THE SOUL, and doubts on that subject were one great cause, he said, of modern infidelity; for, if men could be thoroughly convinced, that they had within them immaterial and immortal spirits, their minds would be prepared for the ready reception of the CHRISTIAN RELIGION."

however weak our country may be, I hope, we shall never sacrifice our liberties. If, therefore, on a full and candid discussion, the proposed system shall appear to have that tendency, for God's sake, let us reject it! But, let us not mistake words for things, nor accept doubtful surmises as the evidence of truth. Let us consider the Constitution calmly and dispassionately, and attend to those things only, which merit consideration. No arguments derived from embarrassment or inconvenience, ought to induce us to adopt a system of Government, radically bad—yet these arguments should be taken into view. In doing this, yesterday, it was necessary to reflect upon our situation; to dwell upon the imbecility of our Union, and to consider whether, we, as a State, can stand alone. Although, I am persuaded, that this Convention will be resolved to adopt nothing that is bad, yet every prudent man will consider the merits of the plan in connection with the circumstances of our country; and will feel, that a rejection of the Constitution may involve fatal consequences.

"It appears to me very extraordinary, while gentlemen, in one breath, acknowledge, that the old Confederation requires many material amendments, that they should deny, in the next, that its defects have been the causes of our political weakness, and our consequent calamities. I cannot but infer from this, that there is still some lurking favorite imagination, that this system, with corrections, might become a safe and permanent one. It is proper, that we should examine this matter. We contend, that the radical vice of the old Confederation, is, that the laws of the Union apply only to States, in their corporate capacities.

"It is inseparable from the disposition of bodies, who have a constitutional power of resistance, to examine the

merits of a law. In this examination, not possessing those lights which directed the deliberations of the General Government; and incapable of embracing in their view, the general interests of the Union, the States have almost invariably weighed the requisitions by their own local interests; and have only executed them, as far as answered their particular convenience, or advantage. Hence, there have ever been thirteen different bodies to judge of the measures of Congress; and the operations of Government have been distracted by the different courses they have taken. Those which were to be benefited, have complied with the requisitions; others have wholly disregarded them. Have we not all of us been witnesses of the unhappy results? During the late war, while the pressure of common danger braced the bond of our Union, and incited to vigorous exertions, have we not felt many distressing effects of this impotent system? Have we not seen this State, though most exposed to the calamities of the war, complying in an unexampled manner with the Federal requisitions; and compelled, by the delinquencies of others, to bear unusual burthens? The proof is on our records. In seventy-nine and eighty, when the State, from the ravages of war and her exertions to resist them, was weak, distressed, exhausted, every man avowed, that our misfortunes, in a great degree, proceeded from the want of vigor in the Continental Government. These were our sentiments, when we did not speculate—but when we felt. We saw our weakness, and found ourselves its victims. May not this again be our situation? In the event of war, this State will probably, be the theatre of its operations.

"It has been said, that the non-compliance of the States has been occasioned by their sufferings. In part, this may be true. But has this State been delinquent? Amidst

all our distresses, we have fully complied. If New York could comply wholly with the requisitions, could not other States have complied in part? Every State in the Union might have executed them in a degree. But, New Hampshire, which has been exempt from suffering, is totally delinquent. North Carolina is totally delinquent. Many others have contributed in a small proportion. Pennsylvania and New York are the only States which have perfectly discharged their Federal duty. From the delinquencies of those States which have suffered little, we conclude, that they have made no efforts; and a knowledge of human nature will teach us, that their ease and security have been principal causes of their want of exertion. While danger is distant, its impression is weak; while it affects our neighbors, only, we have few motives to provide against it. If we have national objects to pursue, we must have national revenues. If requisitions are not complied with; what is to be done? To coerce the States, is one of the maddest projects that ever was devised. A failure to comply, will not be confined to a single State. Will it be wise to hazard a civil war? Should Massachusetts, or any large State refuse, and, should Congress attempt to compel them, would they not have influence to procure assistance, especially from other delinquent States? What a picture does this present!—A complying State at war with a non-complying State! Congress marching the troops of one State into the bosom of another!—This State collecting auxiliaries and forming, perhaps, a majority against its Federal head!—Here is a nation at war with itself! Can any reasonable man be well disposed to a government, which makes war and carnage the only means of supporting itself?—a government, that can exist only by the sword? Every such war must involve the innocent with the guilty. Every peace-

able citizen must be opposed to such a government! But can we believe, that one State will ever suffer itself to be used as an instrument of coercion? It is a dream—it is impossible.—Then, behold the dilemma!—Either a Federal standing army to enforce the requisitions, or the Federal Treasury without supplies—and the Federal Government without support! What is the cure for this great evil? There is none, but to enable the national laws to operate on individuals, as do the State laws. This is the true reasoning. You appear to acknowledge its force, and yet, while you yield to the principle, you seem to fear its application.

"What shall we do? Take the old Confederation as the basis of a new system. Can this be your object? Certainly not. Will any man, who entertains a wish for the safety of his country, trust the sword and the purse with a single Assembly, organized on such defective principles? Though we might with safety give to such a government certain powers, yet to intrust them with full and unlimited powers of taxation, and with the national forces, would be to establish a despotism—the definition of which is, a government in which all power is concentrated in a single body. To retain the old Confederation, and fashion it on these principles, would be to establish a power, which would destroy the liberties of the people. These considerations show, that a government wholly different must be instituted. They had weight in the Convention who formed the new system. It was seen, that the necessary powers were too great to be trusted to a single body. It formed two branches, and divided the powers, so that each might be a check upon the other. The fundamental principle of the old Confederation is defective. We must totally eradicate and discard this principle, before we can expect an efficient government."

Having replied to the inferences drawn from the ancient confederacies, by showing their defects and their fruits, he proceeded: "No inference can be drawn from these examples, that republics cannot exist. We only contend, that they have hitherto been founded on false principles. We have shown, how they have been conducted, and how they have been destroyed. Weakness in the head has produced resistance in the members. This has been the immediate parent of civil war—auxiliary force has been invited, and a foreign power has annihilated their liberties, and their name. Thus, Philip subverted the Amphictyonic, and Rome the Achæan Republic. Let us not deceive ourselves by the favorable events of the late war. Common danger prevented the operation of the ruinous principle. But since the peace, we have experienced the evils—we have felt the poison of the system, in its unmingled purity."

He then stated some circumstances, which attended the deliberations of the General Convention, and continued. "The natural situation of this country seems to divide its interests into different classes. There are navigating, and non-navigating States. It was the interest of the former, that there should be no restraints on their navigation, and that they should have full power, by a majority in Congress, to make commercial regulations in favor of their own, and in restraint of foreign powers. The Southern States wished to impose a restraint on the Northern, by requiring, that two-thirds in Congress should be necessary to pass an act regulating commerce.

The small States, seeing themselves embraced by the Confederation upon equal terms, wished to retain the advantages they possessed. The large States thought it improper that Rhode Island and Delaware should enjoy an equal suffrage with themselves. It became necessary

to compromise, or the Convention must have dissolved. Would it have been wise or, prudent for them to have deserted their country? No—Every man who hears me —Every wise man in the country would have condemned them. They were obliged to appoint a Committee of accommodation. In this Committee, the arrangement was formed, as it now stands. Their report was accepted Let a Convention be called to-morrow. Let them meet twenty times, nay twenty thousand times—they will have the same difficulties to encounter—the same clashing interests to reconcile."

After these preliminary observations, he reviewed the objections which had been raised by the opponents of the new system.

While in the Congress of the Confederation, he is seen to have exerted his influence in inducing the compromise between the States, that did not permit, and those permitting slavery; and which, subsequently, was recognized by the Constitution of the United States. He was now arraigned before the people in a series of acrimonious essays* for acceding to this provision of the Constitution. His early formed views, contemplating a partial, and thence a general emancipation of the slaves, have been shown. This most difficult question, he felt, must be dealt with by a gentle hand. Centuries had elapsed in relieving Europe from this great political calamity. Any approach to a change in the public sentiment on this question, he knew, would be a great advance. This approach, he hoped, that he saw in the recognition of a part of the slave population, as the basis of contribution to the National Treasury. This recognition of them, he

* Entitled "Expositor." His assent to it was denounced as "a most daring insult offered to the freemen, and freeholders of this State, besides being an unparalleled departure from his duty to it, and to the United States."

believed, would probably be followed in fixing the standard of Representation; and thus, the slaves would be regarded, not merely as property, but as persons. The Federal Constitution had so regarded them.

In reply to the objection to this provision, he observed: "Much has been said of the impropriety of representing men who have no will of their own—Whether this be reasoning or declamation, I will not say. It is the unfortunate situation of the Southern States, to have a great part of their population, as well as property, in blacks. Without this regulation as to Representation, no UNION could possibly have been formed. But it is entirely just, they should be gratified. Their staples must be capital objects in Treaties of Commerce with foreign nations, and the advantages which these procure in such Treaties are enjoyed by all the States. There is another view. The best writers on government have held, that Representation should be compounded of persons and property. This rule has been adopted in the Constitution of this State. But, it will not be admitted, that slaves are considered altogether, as property. They are men, though degraded, to the condition of slavery. They are persons known to the municipal laws of the States they inhabit, as well as to the laws of nature. Representation, and taxation, should be regulated by one uniform rule. Would it be just to compute these slaves in the assessment of taxes, and to discard them from the estimate in the apportionment of Representatives? Would it be just to impose a singular burthen, without conferring some adequate advantage? The rule pervades all the States. You have a great number of persons in your State, who are not represented. These will be included in the enumeration, not two-fifths, nor three-fifths, but the whole. The advantages are therefore not confined to the Southern States—they ex-

tend to other parts of the Union." He was replied to, by Williams and Smith.

The next day, he resumed his argument, from which the nature of their objections may be inferred. "No man," he said, "agrees more perfectly than I do, to the main principle contended for. I agree, that there should be a broad Democratic branch in the National Legislature. But its number must depend upon circumstances. It is impossible, in the first instance, to be precise and exact. It is equally impossible, to determine to what point, it may be proper, in future, to increase it. In my reasonings as to government, I rely more on the interests, and on the opinions of men, than upon any speculative parchment provisions. Constitutions are more or less valuable, as they are more or less conformable to the natural operation of things. I am not, therefore, disposed long to dwell on curious speculations, or to pay much attention to modes and forms; but, to adopt a system, whose principles have been sanctioned by experience —adapt it to the real state of the country; and depend on probable reasonings, for its operation and result. I contend, that sixty-five and twenty-six in two bodies, form a perfect security in our present situation; and, that the regular progressive enlargement, which was in the contemplation of the General Convention, will not leave an apprehension of danger in the most timid and suspicious mind. It will be the interest of the large States to increase the representation. But, it is said, the members of Congress will be interested not to increase the number, as it will diminish their relative influence. In all this reasoning, I see this fallacy. It is supposed, that the representative will have no motive of action, on the one side, but a sense of duty; or, on the other, but corruption. It is forgotten, that he is to return to the community; that

he is dependent on the will of the people; and, that it cannot be his interest to oppose their wishes. The general sense of the people will regulate the conduct of their Representatives. There are exceptions to this rule. There are certain conjunctures, when, it may be necessary and proper, to disregard the opinions which the majority of the people have formed. But, in the general course of affairs, the popular views, and, even prejudices, will direct the actions of the rulers. All governments, even the most despotic, depend, in a great degree, on Opinion. In free republics, this is peculiarly so. In these, the will of the people constitutes the essential principle of the Government; and the laws which control the community, receive their tone and spirit from the public wishes. It is the fortunate situation of our country, that the minds of the people are exceedingly enlightened, and refined. Here then, we may expect the laws to be proportionally agreeable to the standard of a perfect policy; and the wisdom of public measures to consist with the most intimate conformity between the views of the Representative and of his constituent. If the general voice of the people be for an increase, it must, undoubtedly, take place. They have it in their power to instruct their Representatives, and the State Legislatures, which appoint the Senators, may enjoin it also upon them. If I believed the number would remain at sixty-five, I confess, I should give my vote for an amendment.

"The amendment proposes a ratio of one for twenty thousand. By what rule or reasoning, is it determined, that one man is a better representative for twenty than thirty thousand? We have now three millions of people. In twenty-five years, we shall have six. In forty years, nine millions—and this is a short period in the existence

of States. In forty years, we shall have three hundred Representatives. If this be true—if this be a safe representation, why be dissatisfied?—why embarrass the Constitution with amendments, that are merely speculative and useless? I admit, that a very small number might give color for suspicion. I acknowledge, ten would be unsafe; but a thousand would be too numerous. Why will not ninety-one—the present number—be an adequate and safe representation? The President of the United States will, himself, be the representative of the people. From the competition that ever subsists between the branches of Government, the President will be induced to protect their rights, whenever they are invaded by either branch. On whatever side, we look, we discover various and powerful checks to the encroachments of Congress. The true and permanent interests of the members are opposed to corruption. Their number is vastly too large for easy combination. The people have an obvious and powerful protection in their own State Governments. Should any thing dangerous be attempted, these bodies of perpetual observation will be capable of forming and conducting plans of regular operation. Can we suppose, the people's love of liberty will not, under the incitement of their legislative leaders, be roused into resistance, and the madness of tyranny be extinguished at a blow?"

He next, controverted the observation, that a pure democracy, if practicable, would be the most perfect Government. "No position," he remarked, "in politics is more false than this. The ancient democracies did not possess one feature of good government. Their very character was tyranny; their figure, deformity." He also denied the assertion, that a numerous representation was necessary to obtain the confidence of the people. "This is

not generally true. The confidence of the people will easily be gained by a good administration. That is the true touchstone." In confirmation of this idea, he appealed to history.

Having answered the objection, that a large representation was necessary to understand the interests of the people, he again commented on the alarms excited as to the dangers of corruption. "It is a harsh doctrine," he observed, "that men grow wicked, in proportion, as they improve and enlighten their minds. Experience has, by no means justified the position, that there is more virtue in one class of men than in another. Look through the rich and the poor; the learned and the ignorant; where does virtue predominate? The difference consists, not in the quantity, but in the kind of vices; and here, the advantage of character belongs to the rich. Their vices are, probably, more favorable to the prosperity of the State, than those of the indigent; and, partake less of moral depravity. The true principle of a Republic is, that the people should choose whom they please to govern them. Representation is imperfect, in proportion as the current of popular favor is checked. THIS GREAT SOURCE OF FREE GOVERNMENT—POPULAR ELECTION—SHOULD BE PERFECTLY PURE, AND THE MOST UNBOUNDED LIBERTY ALLOWED. Where this principle is adhered to—where, in the organization of the Government, the Legislative, Executive, and Judicial branches are rendered distinct—where the Legislature is divided into separate houses, and the operations of each are controlled by various checks and balances, and by the vigilance and weight of the State Governments, to talk of tyranny and of the subversion of our liberties, is, to speak the language of enthusiasm." Adverting to the allegation, that it had become a prevailing doctrine, that republican principles

ought to be hooted out of the world, he remarked: "There have been, undoubtedly, some men who have had speculative doubts on the subject of Government; but the principles of Republicanism are founded on too firm a basis to be shaken by a few speculative and sceptical reasoners. We have erred through excess of caution, and a zeal, false and impracticable. Our counsels have been destitute of consistency and stability. I trust, that the proposed Constitution affords a genuine specimen of Representative and Republican Government; and, that it will answer, in an eminent degree, all the beneficial purposes of society."

Smith, Lansing, and Clinton, replied. They were again answered by Hamilton, who was followed by Harrison and Livingston, in favor of the Constitution; and by Smith, in opposition. Jay, in his quiet, limpid style, without gesture, yet impressive, closed the debate. He contended, that the representation would be adequate to all the purposes of the Federal Government; and, that the facility of corruption was much greater in the existing Congress, than it could possibly be under the new Government. "I cannot," he observed, "conclude without repeating, that, though I prefer a large representation, yet, considering our present situation, I see abundant reason to acquiesce in the wisdom of the General Convention, and to rest satisfied, that the representation will increase in a sufficient degree, to answer the wishes of the most zealous advocates for liberty."

The constitution and powers of the Senate were next discussed; and, after a highly-wrought picture of the dangerous nature of that body, several amendments were proposed. Of these, the principal were, that no Senator should be eligible more than six out of twelve years; and, that the Senators should be subject to be recalled during

their term of service. Lansing supported this proposition with great zeal, insisting, that it alone would give the States a due control over the Senate. Morris, Harrison, and Livingston replied.

During this discussion, Hamilton received a letter announcing the ratification of the Constitution by New Hampshire.* Thus the requisite number of nine States had adopted it. Inspirited by this result, he again entered into the debate. "We all," he said, "with equal sincerity, profess to be anxious for the establishment of a Republican Government, on a safe and solid basis. It is the object of the wishes of every honest man in the United States; and, I presume, I shall not be disbelieved, when I declare, that it is an object of all others, the nearest and dearest to my own heart. The means of accomplishing this great purpose, become the most important study which can interest mankind. It is our duty, to examine all those means with peculiar attention; and to choose the best and most effectual. It is our duty, to draw from nature, from reason, from examples, just principles of policy; and to pursue and apply them in the formation of our Government. We should contemplate and compare the systems which, in this examination, come under our view; distinguish, with a careful eye, the defects and excellencies of each; and, discarding the former, incorporate the latter, as far as circumstances will admit, into our Constitution. If we pursue a different course and neglect this duty, we shall probably disappoint the expectations of our country and of the world. In the commencement of a Revolution which received its birth from the usurpation of tyranny, nothing was more natural, than

* Belknap's History, ii. 368, states, that the Convention sat three days, "and with the *same help* as in Massachusetts," it was ratified by a majority of eleven, out of one hundred and three votes.

that the public mind should be influenced by an extreme spirit of jealousy. To resist its encroachments, and to nourish this spirit, was the great object of all our public and private institutions. The zeal for liberty became predominant and excessive. In forming our Confederation, this passion alone seemed to actuate us; and we appear to have had no other view than to secure ourselves from despotism. The object deserved our utmost attention. But there is another object, equally important, and which our enthusiasm rendered us little capable of regarding. I mean, a principle of strength and stability in the organization of our Governments, and vigor in its operations. This purpose could never be accomplished, but by the establishment of some select body, formed upon this principle. There should be, in every Republic, some permanent body to correct the prejudices, check the intemperate passions, and regulate the fluctuations of a popular assembly. A body instituted for these purposes must be so formed as to exclude, as much as possible, from its own character, those infirmities and that instability, which it is designed to remedy. It should, therefore, be small; should hold its authority during a considerable period, and should have such an independence in the exercise of its powers, as will raise it, as much as possible, above local prejudices. It should be so formed, as to be the centre of political knowledge; to pursue always a steady line of conduct, and to reduce every irregular propensity to system. Without such an establishment, we may make experiments without end, but shall never have an efficient Government. It is an unquestionable truth, that the body of the people, in every country, desire sincerely its prosperity. But, it is equally unquestionable, that they do not possess the discernment and stability necessary for systematic government. To deny that they

are frequently led by the grossest errors, by misinformation, and by passion, would be a flattery, which their own good sense would despise. These truths are not often told in public assemblies, but they cannot be unknown to any who hear me. It follows, that there ought to be two distinct* bodies in our Government—one, which shall be immediately constituted by, and peculiarly represent, the people, and possess all the popular features—another, formed upon the principles, and for the purposes, I have before stated." Having pointed out the tendency of the proposed amendments to destroy the stability, permanence, and independence of the Senate, he observed: "The interests of the States and of the United States, have been placed in contrast. This is not a fair view of the subject. They must, necessarily, be involved in each other. What we apprehend is, that some sinister prejudice, or prevailing passion, may assume the form of a genuine interest. The influence of these is as powerful as the most permanent conviction of the public good, and against this influence we ought to provide. There must be a perpetual accommodation and sacrifice of local advantage to general expediency. But, a mere popular assembly would be rarely actuated by this consideration. It is, therefore, absolutely necessary, that the Senate should be so formed as to be unbiased by false conceptions of the real interests, or undue attachment to the apparent good, of their several States."

These observations were followed by others, showing that, the States "were essential component parts of the Union;" and, that the means they possessed of sustaining

* It is related by Benson, that being checked in the full progress of his remarks, Hamilton observed to him in an under tone, "I *must* state the Constitution in *all its truth* and *force*." "Go on," Benson replied, "you will not lose a vote."

themselves, rendered all apprehension for their safety groundless. He then returned to the considerations in favor of a select and durable Senate. "A government," he remarked, "changeable in its policy, must soon lose its sense of national character, and forfeit the respect of foreigners. Senators will not be solicitous for the reputation of public measures, in which they take but a temporary part; and will feel lightly the burden of public disapprobation, in proportion to the number of those who partake of the censure." "This," he observed in his closing remarks, "This is the first fair opportunity that has been offered of deliberately correcting the errors in Government. Instability has been a prominent, and very defective feature in most Republican systems. It is the first to be seen, and the last to be lamented by a philosophical inquirer. It has operated most banefully in our infant republics. It is necessary that we apply an immediate remedy, and eradicate the poisonous principle from our Government. If this be not done, we shall feel, and posterity will be convulsed by the malady." *

After a defence of the proposed amendment by Lansing and Smith, who insisted, that the States would be gradually extinguished, unless the dependence of the Senate on the State Legislatures should be thus secured; and, that the Senate would otherwise, become a perpetual body, under the influence of a perpetual faction, Hamil-

* It is stated, that he occupied two days on the Senate. "Tears were in the eyes of the audience." Colonel Huger of S. C., said, "I did not conceive it possible for man to speak so." And Chancellor Kent remarks—"His two speeches on the organization, powers, and stability of the Senate, were regarded at the time, by the best judges, as the noblest specimens which the debates in that, or any other assembly, ever afforded, of the talents and wisdom of the statesman." How much is to be regretted the bald and inaccurate reports of them, from which this outline is drawn.

ton resumed his argument, which was much extended. The leading observations will only be given. "There are two objects," he said, "in forming systems of government—safety for the people, and energy in the administration. When these are united, the certain tendency of the system will be to the public welfare. If the latter be neglected, the security of the people will as certainly be sacrificed, as by disregarding the former. Good constitutions are formed upon a comparison of the liberty of the individual with the strength of government. If the tone of either be too high, the other will be weakened too much. It is the happiest possible mode of conciliating these objects, to institute one branch peculiarly endowed with sensibility, another with knowledge and firmness. Through the opposition and mutual control of these bodies, the government will reach, in its regular operations, the perfect balance between liberty and power. I admit that the aggregate of individuals constitutes the Government. Yet every State is not the Government. Every petty district is not the Government. In our State Legislatures, a compromise is frequently necessary between the interests of counties. The same thing must happen in the General Government between States. In this, the few must yield to the many—the particular must be sacrificed to the general interest. It is proper, that the influence of the States should prevail to a certain extent. But shall the individual States be the judges how far? Shall an unlimited power be left to them to determine in their own favor? Gentlemen go to an extreme. Instead of a wise Government, they would form a fanciful Utopia. Men will pursue their interests. It is as easy to change human nature, as to oppose the strong current of the selfish passions. A wise legislator will gently divert the channel, and direct it, if possible, to the public good."

CHAPTER LIV.

After the conclusion of the debate, on the structure of the Legislative body, the article, declaring its powers, was considered. It was asserted, that, connecting the preamble with the clause which gave the power of raising revenue, and with that which empowered the making of all laws necessary and proper for carrying into execution, the powers vested in the Government by the Constitution, Congress "might pass any law it thought proper." An amendment was proposed, prohibiting an excise being imposed on articles, the growth or manufacture of the United States: forbidding the laying direct taxes, until the proceeds from the impost and excise were insufficient; and then, only, after a requisition for the amount upon the States. Smith declared, that the General Government should rest in some degree, not only for its foundation, but operation, on the State Governments; and their respective powers be clearly defined. Unless some specific revenue is reserved to them, their governments, with their Independence, will be totally annihilated. "A consolidation of the States," Livingston observed, "ought to be avoided, but the extent of the country will not admit of a representation upon principles, in any great degree, democratic. We shall become a manufacturing people—Imports will diminish—New sources of revenue be required—Distilled liquors will be a first object of excise,

very productive and favorable to morals." Hamilton took a large view of this part of the Constitution. "After all our doubts—our suspicions and speculations on the subject of government, we must return," he observed, "at last to this important truth—that, when we have formed a Constitution upon free principles, when we have given a proper balance to its different branches, and fixed the Representation upon pure and equal principles, we may with safety confide to it all the powers necessary to answer, in the most ample manner, the purposes of government." He then examined, at length, the structure of the Federal Government, to show how far these purposes had been accomplished. He next considered the objects of the respective governments, in order, to exhibit the necessity of conferring on that of the Union, a command of the revenue; and pointed out the inconveniences of attempting to give to each, exclusive sources of revenue; alleging, that the concurrent system proposed, would, in fact, be most advantageous to the States." The existence of the State Governments, he remarked, "must form a leading principle in the most perfect Constitution we could form. It never can be the interest or desire of the National Legislature to destroy them. It can derive no advantage from such an event, but would lose an indispensable support, a necessary aid in executing the laws, and conveying the influence of government to the doors of the people. The Union is dependent on the will of the States for its Chief Magistrate, and for its Senate—a blow aimed at the members must give a fatal wound to the head—The destruction of the States would be, a political suicide. Can the National Government be guilty of such madness? What inducements, what temptations can they have? Will they attach new honors to their station? Will they increase the National strength? Will they multiply the National

resources? Will they render themselves more respectable in the view of foreign nations, or of their fellow-citizens, by robbing the States of their Constitutional privileges? Should such a political frenzy seize the General Government, the attempt would be impracticable.

"There are certain social principles in human nature from which we may draw the most solid conclusions as to the conduct of individuals, and of governments. We love our families, more than our neighbors. We love our neighbors, more than our countrymen in general. The human affections, like the solar heat, lose their intensity as they depart from the centre, and become languid in proportion to the expansion of the circle on which they act. Hence, the attachment of individuals will be first, and for ever secured by the State Governments. The States can never lose their powers, until the whole people of America are robbed of their liberties. These must go together. They must support each other or meet one common fate. It is said, where the laws of the Union are supreme, those of the States must be subordinate, because there cannot be two supremes. This is curious sophistry. That two supreme powers cannot act together, is false. They are inconsistent only, when they are aimed at each other, or at one indivisible object. The laws of the United States are supreme, as to their proper, Constitutional objects. Those of the States are supreme, in the same way. These supreme laws can act on different objects without clashing, or they may operate, on different parts of the same common object, with perfect harmony. The meaning of the maxim, that there cannot be two supremes; is simply this —two powers cannot be supreme over each other." He closed with this remark: "I wish the committee to remember, that the Constitution under examination is framed upon truly republican principles; and that, as it is ex-

pressly designed to provide for the common protection, and the general welfare of the United States, it must be utterly repugnant to this Constitution to subvert the State Governments, or to oppress the people."* Hamilton now wrote to Madison: "There is more and more reason to believe, that our conduct will be influenced by yours. Our discussions have not yet travelled beyond the power of taxation. To-day, we shall probably quit this ground, to pass to another. Our arguments confound, but do not convince. Some of the leaders, however, appear to be convinced by *circumstances*, and to be desirous of a retreat. This does not apply to the Chief, who wishes to establish CLINTONISM on the basis of ANTIFEDERALISM." * * * "The object of the party at present is, undoubtedly, conditional amendments." "There are some slight symptoms of relaxation in some of the leaders, which authorize a gleam of hope, if you do well, but certainly, I think, not otherwise."

Such was the action and reaction of the several States upon each other.

At the opening of the Convention, on the following day, Hamilton asked leave to introduce a series of official papers, in order to show, that "New York had sustained peculiar misfortunes from the mode of raising revenues by requisitions, and had suffered the extremes of distress on account of this delusive system." After these papers were read, Governor Clinton observed, "that there could be no doubt, that the representations made in them, were true, and that they clearly expressed the sentiments of the people at those periods. Our severe distresses naturally led

* Harrison's notes of this speech, are very imperfect.—They commence —"Bravo. This is one of the most excellent, energetic speeches I ever heard." He soon abandoned the attempt to follow the rapidity of the speaker.

us into an opinion, that the Confederation was too weak. It appears to me, the design of producing these papers is something more, than to show the sentiments of the State during the war; that, it is to prove, that there now exists an opposition to an energetic government. I declare solemnly, that I am a friend to a strong and efficient government. But we may err in this extreme. We may erect a system, that will destroy the liberties of the people. At the time some of these resolves were passed, there was a dangerous attempt to subvert our liberties, by creating a supreme Dictator. There are many here present, who know how strongly I opposed it. My opposition was at the very time we were surrounded with difficulties and dangers. The people, when wearied with their distresses, will, in the moment of frenzy, be guilty of the most imprudent and desperate measures. If gentlemen can show, that the proposed Constitution is a safe one, I will drop all opposition."

Hamilton then arose, and, referring to the observations of Clinton, inquired, why, after his declarations in favor of a strong Federal Government, he had not pointed out the defects of the proposed Constitution, or suggested a better form? He then adverted to the conduct of the opponents of the impost, and, admitting, that he was bound from a sense of their integrity, to believe, that they were attached to a strong United Government, he confessed, that he found it difficult to draw this conclusion from their conduct or their reasonings. He then proceeded in his argument in favor of the fiscal powers of the Constitution. "The word 'supreme,'" he remarked, "imported no more than this—that the Constitution and laws made in pursuance of it, cannot be controlled or defeated by any other law. The acts of the United States will be absolutely obligatory as to all the proper objects

and powers of the General Government. The States as well as Individuals, are bound by these laws. But, the laws of Congress are restricted to a certain sphere: and when they depart from this sphere, they are no longer supreme, or binding. In the same manner, the States have certain independent powers, in which their laws are supreme. That the States have an undoubted right to lay taxes in all cases in which they are not prohibited, is a position founded on the obvious and important principle in confederated governments, that all powers not exclusively granted, are retained.* The exclusive grant is seen in three cases—where, by express words of exclusion —by affirmative and negative expressions—and by direct repugnancy. Exclusive legislation over the Federal city, is an example of the first—revenue from Imports, of the second, —an uniform rule of Naturalization, of the third." He then showed the propriety of the power of taxation being concurrent, and that its objects ought not to be defined. Having dwelt upon the remissness of the States, he pointed out fully the impolicy of again resorting to requisitions; and then, alluding to the probable changes in the condition of this country, deduced the wisdom of the provision, which contemplated an eventual resort to an excise on manufactures, when fully established—remarking: "Even at the present period, there is one article, from which a revenue may very properly be drawn. I speak of ardent spirits."

. . . . "In every view, excises on domestic manufactures would benefit New York. But you would defeat the advantages of our situation, by drawing upon us all

* This is taken from Hamilton's MSS. brief. The report, erroneously, gives the language, "that, whatever is not *expressly* given to the Federal Head, is reserved to the members."

the burthens of government. The nature of the Union requires, that we should give up our State impost. The excises were designed as a recompense to the importing States for relinquishing their imposts. Why should we reject the benefits conferred on us? Why run blindly against our interest? I shall no furthur enlarge on this argument—my exertions have already exhausted me. I have persevered from an anxious desire to give the most complete conception of this subject. I fear, that I have not been so successful as to bestow upon it that full and clear light of which it is susceptible.

"I am apprehensive, that, in the warmth of my feelings, I may have uttered expressions which were too vehement. If, such has been my language, it proceeds from the habit of using strong phrases to express my sense, and above all, from the interesting nature of the subject. I have ever condemned those cold, unfeeling hearts, which no object can animate. I condemn those indifferent mortals, who either never form opinions, or never make them known. I confess, that on no subject has my heart been filled with stronger emotions, or more anxious concern. If any thing has escaped me, which may be construed into a personal reflection, I beg, once for all, gentlemen, to be assured, that I have no design to wound the feelings of any opposed to me. Yet, I cannot but take notice of some expressions, which have fallen in the course of the debate. It has been said, that ingenious men may say ingenious things; and, that those who are interested in raising the few upon the ruins of the many, may give to every cause an appearance of justice. I know not whether these insinuations allude to the characters of any who are present, or to any of the reasonings in this house. I presume, that such motives would not be ungenerously imputed to those who differ from themselves. I declare,

I know not any set of men who are to derive peculiar advantages from this Constitution. Were any permanent honors or emoluments to be secured to the families of those who have been active in this cause, there might be ground for suspicion. But what reasonable man, for the precarious enjoyment of rank and power, would establish a system which would reduce his nearest friends and his posterity, to slavery and ruin? If gentlemen count me among the obnoxious few—if they imagine, that I contemplate with an ambitious eye, the immediate honors of the Government; yet, let them consider, that I have my friends —my family—my children, to whom the ties of nature and of habit have attached me. If, to-day, I am among the favored few; my children, to-morrow, may be among the oppressed many. These dearest pledges of my patriotism, may, at a future day, be suffering the severe calamities to which my ambition has reduced them. The changes in the human condition are uncertain, and frequent. Many, on whom fortune has bestowed her favors, may trace their family to a more unprosperous station; and many who are now in obscurity, may look back upon the affluence and exalted rank of their ancestors. It cannot be the wish of any reasonable man, to establish a Government unfriendly to the liberties of the people. It is not to be presumed, that the advocates of this Constitution are influenced by ambitious views. The suspicion is unjust—the charge is uncharitable."

Lansing insisted, that the power of Congress reached every source of revenue—involving various litigation, under the judicial cognizance of the United States; that the States had ever shown a disposition to comply with the requisitions, and that the delinquencies were to be attributed to the impoverished state of the country. He dwelt upon the dangers of giving to the General Government,

the sword and purse. "It has been admitted," he observed, "by an honorable gentleman from New York, that the State Governments are necessary to secure the liberties of the people. He has urged several forcible reasons, why they ought to be preserved under the new system; and he has treated the idea of the General and State Governments, being hostile to each other, as chimerical. That a hostility between these would exist, was a received opinion in the late Convention at Philadelphia. That honorable gentleman was then fully convinced, that it would exist, and argued with much decision and plausibility, that the State Governments ought to be subverted, at least, so far, as to leave them only corporate rights; and that, even in that situation, they would endanger the existence of the General Government. But, the honorable gentleman's reflections have probably induced him to correct that sentiment."

Hamilton here interrupted Lansing, "entered into a statement of facts—denied his assertions—affirmed, that in the General Convention his ideas had been uniformly the same, as on the present occasion; that though he, at that time declared, as he had constantly and publicly done since, his apprehension, that the State Governments would finally subvert the General system, unless the arm of the Union was more strengthened, than it was even by this Constitution, yet he had, through the whole of the business, advocated the preservation of the State Governments, and affirmed them to be useful and necessary." He charged Lansing's insinuation as "unbecoming, improper, and uncandid." Lansing resented warmly the imputation, and appealed to Chief Justice Yates, who had taken notes in the Federal Convention, for a proof of Hamilton's expressions. A motion for an adjournment terminated the altercation.

At the next meeting of the Convention, the Chief Justice was again called upon by Lansing, for his evidence. In this appeal, Hamilton acquiesced. After apologizing for the possible mistakes of his minutes, Yates stated, that, in the General Convention, Hamilton had urged strongly giving the most complete sovereignty to Congress, and that, in order to prevent the encroachments which he feared the State Governments would make upon the Union, they should be reduced to a smaller scale, and be invested with only corporate powers. Hamilton observed, that, corporate was an ambiguous term; and asked Yates, if he understood, that he used it, as descriptive of powers similar to those of the City of New York? To which Yates answered in the negative, adding, that he understood the gentleman not to wish such a privation of powers as would reduce the States to mere corporations, in the popular acceptation of that term, but only such as would prevent the members from retarding, in any degree, the operations of the United Government.

Hamilton then asked him, if he did not, after the debate in the Federal Convention, hear him say, that his opinion was, that the State Governments ought to be supported, and that they would be useful and necessary; and, if he did not remember, that he, had recommended, (as an additional security to the State Governments,) a Court of Impeachments, to be composed of the chief Judges of the several States, together with the Chief Justice of the United States? To all those questions Yates gave an affirmative answer. On Jay's proposing to him some questions, with a view to place this matter in the most explicit point of light, Yates answered as before—that Colonel Hamilton did not appear to him to point at a total extinguishment of the State Governments, but only to deprive them

of the means of impeding the operation of the Union. Some explanations were attempted by Lansing, but, Jay having the floor, he was called to order. He afterwards expressed a wish, that Yates's notes might be read, but it was not permitted, on the suggestion, that they ought to be brought forward by a formal motion, according to the rules of the House. Lansing, not seeing fit to comply, the affair was terminated by a motion to adjourn.

The debate on the proposed amendment was concluded on the second of July. From its course, it was apparent, that the subject had been previously exhausted. The succeeding day, the clause authorizing Loans, was considered; when an amendment was moved by Lansing, that, the assent of two-thirds of the members present of both Houses, should be necessary for that purpose.

Hamilton, Harrison, Jay, and the Chief Justice opposed earnestly this amendment. Smith and Clinton sustained it. The latter would have placed it on the same grounds with that part of the Constitution, which required two-thirds of the Senate to make Treaties, and two-thirds of the Court of Impeachments to convict. During his speech, an express arrived, and Hamilton read to the Convention, Madison's letter, announcing the ratification by Virginia. A salute was fired. Various amendments were then proposed—one, by Lansing, to require the concurrence of two-thirds to raise or maintain regular troops during peace; another, that, the militia should not march out of their State, without the consent of its Executive; a third, that no power, not expressly given, shall be exercised by Congress; and that those not expressly given, are reserved to the States; a fourth, excluding monopolies; a fifth, requiring a vote of two-thirds of Congress to declare war; a sixth, prohibiting Congress from laying out or repairing any road through a State, without the

consent of its Legislature, which was met with laughter. No notice was taken of these amendments by the friends of the Constitution. Its opponents, disheartened by the intelligence from Virginia, moved an adjournment.

On the fourth of July, the constitution of the President was taken up. The objections to this part of the system were, his re-eligibility—command of the army—power of pardoning in cases of treason. . . . . Amendments were proposed, that he should be elected for seven years, and then be ineligible; and that to his command of the army or pardoning, in case of treason, the consent of Congress should be necessary.

The Judiciary Department was next considered. It was said, that this article is exceptionable in many instances; that it does not define sufficiently the cases to which it applied; that it rendered necessary a number of Courts, which would be dangerous or expensive; that it might be necessary to have Courts in every county, with all their officers, though Congress might commission the State Courts—but, that this would be very inconvenient; that the jurisdictions may clash. The want of a Court of Errors, appellate from the Supreme Court, was asserted; and it was urged, that new Courts generally tend to the oppression of the people; that the two governments should be made to harmonize with each other—therefore, jurisdiction, in the first instance, should be committed to the State Courts; that continual disputes would exist, until one Court swallowed up the other. That the State Courts would probably be the victims; that the Supreme Court ought to be independent, but not of the Legislature, and a Commission of Review, "as in Wales," was proposed, "the very knowledge of which," it was remarked, "will make the Judges cautious. This effect,

alone would be a sufficient reason for bringing forward the proposition."

The proposed commission was to consist of not less than seven learned men, to be appointed by the President, with the consent of the Senate, at the instance of any aggrieved party, to correct the errors or review the sentence of the Supreme Court—a provision, that would thus place the ultimate administration of Justice, at the will of the Executive!!

It was suggested, also, that intermediate Courts of Appeal would be necessary—that doubts might arise as to the expression, "appellate *jurisdiction*," both as to Law and Fact—adverting to the provision of the Constitution of New York, "that appeals in this State from Courts of Common Law, should be by writ of Error."

After proposing several amendments, the objectors concluded with a remark, not without force, "That it had been attempted to make this Constitution too perfect, from a view of particular inconveniences."

Melancthon Smith followed, in opposition to the superintending power of the Supreme Court. Unfortunately, no notes have been found of the arguments offered in defence of this part of the Constitution. The remaining articles were briefly discussed.

The debate on the Constitution, in detail, being closed on the seventh of July, Lansing submitted a Declaration of Rights. Governor Clinton then stated, "that many of the amendments were merely declaratory, others were of a different nature; that he wished them to be arranged, and the matters in support of the clauses considered. To give time for these purposes, he moved that the Committee should rise. The House adjourned to the eighth. On this day, Hamilton writes to Madison: "I felicitate you sincerely on the event in Virginia, but my satisfaction

will be alloyed, if I discover too much facility in the business of amendment-making. I fear the system will be wounded in some of its vital parts, by too general a concurrence in some very injudicious recommendations. I allude more particularly to the power of taxation. The more I consider 'Requisition,' in any shape, the more I am out of humor with it. We, yesterday, passed through the Constitution. To-day, some definite proposition is to be brought forward, but what, we are at a loss to judge. We have good reason to believe, that our opponents are not agreed, and this affords some ground of hope. Different things are thought of—*conditions precedent*, or previous amendments; *conditions subsequent*, or the proposition of amendments upon condition, that, if they are not adopted within a limited time, the STATE shall be at liberty to *withdraw* from the Union; and, lastly, *recommendatory amendments*. In either case, *constructive declarations* will be carried as far as possible. We will go, as far as we can, in the latter, without invalidating the act, and will concur in rational recommendations. The rest, for our opponents."

Nothing was done on the two succeeding days. On the tenth, Lansing brought forward his amendments, in three classes—Explanatory, Conditional, and Recommendatory. Among the first, was a Bill of Rights. The CONDITIONAL were, that there should be no standing army in time of peace, without the consent of two-thirds of Congress; no direct taxes or excises on American manufactures; the amendment previously stated, as to the militia; and, that, Congress shall not interfere as to the elections, unless a State should neglect or refuse to provide for them. He then proposed a Committee from each party, to form a compromise. This was acceded to. The Committee met. At this meeting, the Anti-federalists

proposed a conditional adoption. This proposition was strongly opposed; and, on the following day, Jay reported the failure of this attempt, asserted that it was equivalent to a rejection of the Constitution, and moved a resolution for an unconditional ratification of it. Smith and Lansing insisted, that, as the Representatives of a Sovereign State, they had the power to agree to the Constitution, under any restrictions or qualifications. As to the proposed amendments, Smith observed, that he did not suppose, that Congress would probably exercise the powers reserved by the intended ratification. Will they excise home manufactures, when we have scarce any? He denied, that he meant to dictate, that he only wished a fair consideration of the subject by a Convention to be called by the other States.

Clinton urged the substitute; and, after a few brief observations, inquired, "Whence did Congress get the power to alter the original Confederation, and to organize the present Government? If this question was answered he would answer the gentleman's reasoning." *

The succeeding day, Jay commented on the proceedings in the informal Committee. He complained, that when they met for mutual discussion, they had been insulted by a complete set of propositions presented in a dictatorial manner for their passive acquiescence. He closed with this reply to the Governor's question—"when it is a fair system of reasoning in the search for truth, to

* 12th July. Dewitt Clinton writes from Poughkeepsie: "The business of the Convention is now wound up to a crisis. I expect the Convention will break up in a few days. The proposal, is the ne plus ultra of anti-concession. Many, indeed, think they had conceded too much. If the Fed's had been friendly, instead of being inimical, to the proposal, I have my doubts, whether a majority of the Anti's would not have voted against it. But the opposition of their political adversaries has reconciled them."—Life of Lamb, 316.

put one difficult question in reply to another, he would feel it necessary to answer the gentleman; but, meanwhile, would leave him to reflect on this inquiry: How comes it, that fish are fresh which swim in salt water?"

Hamilton then took the floor. He* "opened with a beautiful exordium, in which he described, in a delicate, but highly affecting manner, the various ungenerous attempts to prejudice the minds of the Convention against him. He had been represented, as an ambitious man—a man, unattached to the interests and feelings of the people; and even his supposed talents had been wrested to his dishonor, and alluded to, as an impeachment of his integrity and virtue. He called on the world to point out an instance, in which he ever had deviated from the line of public or private duty. He then examined the proposed provisional adoption. He proved, that the Convention had no power, but to adopt or reject absolutely, except to recommend, which was the natural right of every freeman; but, that it had no right to dictate or to embarrass the Union, by any restrictions or conditions. That the Convention was not a body commissioned to tender stipulations, or form a contract, but to dissent from, or agree to, a plan of Government, which could be altered, either in its form or powers, only by an authority equal in all respects to that which gave it existence. He then declared, that the future Congress would not have any authority to receive New York into the Union, on such terms—that this conditional adoption evidently included a disagreement to, and rejection of, a part of the Constitution. That Congress, which would hold all the powers it possessed under the Constitution, as a simple plan, must consider such a partial, as a total, rejection.

"That a declaration by any Legislature, that such

* From a journal of that date.

and such constitutional powers, should not be exercised, was nugatory; that the proposed provisions, making no part of the Constitution, and, when accepted by Congress, having even, if consistent with the Constitution, no other than a legal force, would be subject to an immediate repeal; that it was indispensably necessary to good Government; that the discretion of the Legislature should be uncontrollable, except by the Constitution. But, that, by the proposed measure, the discretion of Congress would be limited and controlled by a provision, not only foreign from, but totally inconsistent with that instrument—a provision coming from one part of the Union, without the consent of the other parts—a provision most preposterously calculated to give law to all the sister States."

He adduced other arguments to prove, that restraining the exercise of a power, or exercising it in a mode different from that pointed out in the form of Government, was utterly unconstitutional, especially, when the restraint only related to a part of the community.

He then urged many forcible reasons to prove, that were it even consistent with the Constitution to receive the State on these terms, it was utterly improbable, that the other States would submit to it. Their interests and their pride would be opposed to it. Their pride, because the very proposal is an insult, and the animosity of some States, embittered, as it was, by what they deemed a kind of commercial tyranny, and by a system of selfish, partial politics, would receive most pungent gratifications from a diminution of our fortune and our power. Their interests would be opposed, because the misfortunes of one powerful State commonly contribute to the prosperity of its neighbors.

After recapitulating his arguments, in a concise and cogent manner, he entreated the Convention, in a pathetic

strain, to make a solemn pause, and to weigh well their course, before they decided on a subject so infinitely important. The more to satisfy the doubts of the Convention, he took an enlarged view of the nature of the Federal Government. *

It had been hoped, that the concurrence of Virginia, following that of New Hampshire, would have decided the vote of New York, that the greetings, processions and celebrations throughout the Continent, pouring in a tide of triumph, would have shaken the purposes of the opposition, but this hope was baffled. Every effort to conciliate had been rejected; and, led on by a resolute and inflexible chief, the opponents of the Constitution, after repeated consultations, resolved to reject it.

With this purpose, on the fourteenth of July, they called for the final question; but the call was, at the instance of Hamilton, postponed until the following day.—Another day was asked, and, on the sixteenth, despairing of its adoption, Judge Hobart moved an adjournment to the second of September, in order, that the delegates might learn the sentiments of their constituents in the new aspect of the question, which the concurrence of so many States presented.

This motion was discussed during two days, when, it is stated in a journal of the opposition, that previous to taking the question, Hamilton "made another display of those great abilities for which he is justly distinguished. He was powerful in his reasoning, and so persuasively eloquent and pathetic, that he drew tears from most of the audience." "Hamilton," another opponent writes, "stands armed at all points, and brandishes a shaft to every opposer—powerful to repel and keen to wound."

* The above is the reported sketch of this speech. Its imperfect character will be seen by referring to Hamilton's Works, ii. p. 463.

The motion was lost by a majority of eighteen votes. Smith's conditional ratification was then presented, for which Hamilton proposed a substitute, which has interest as showing his views of the Constitution, its nature and powers.* A motion to consider this substitute, was lost by the votes of two-thirds of the Convention.

The ratification upon conditions, being then considered, Hamilton again addressed the House. When he had concluded, Smith arose, acknowledged, that the arguments against his proposition were not only of great weight, but were such as had induced him to abandon it; that, he desired to *withdraw* it, in order to present a substitute, which, he thought, would remove the objections of the Federalists, while it would afford to the opposition, all that security for the consideration of their amendments, they wished.† Lansing declared, that if it should be withdrawn, that he would again move it. Smith's substitute contained various important amendments; proposed a ratification of the Constitution; but, with the reservation of a right to recede, unless these amendments should, within a defined time, be submitted to the people, and requested Congress to call a second Convention for that purpose.

On the ensuing day, the House met—silence pervaded it, and it adjourned. "I found him" (Hamilton) "alone," it is related, "and took the liberty to say to him, that they would enquire of me in New York, what was the prospect in relation to the adoption of the Constitution; and asked him what I should say to them. His manner immediately changed, and he answered; 'God only knows. Several

* July 17—Hamilton's Works, ii. p. 467.

† "The overpowering eloquence of Colonel Hamilton was exerted to its utmost pitch, and shook the most resolved of the majority. Even the mover of the proposition was convinced, and withdrew his opposition."—Kent's Recollections.

votes have been taken, by which it appears, that there are two to one against us.' Supposing he had concluded his answer, I was about to retire, when he added, in a most emphatic manner: 'TELL THEM, THAT THE CONVENTION SHALL NEVER RISE, UNTIL THE CONSTITUTION IS ADOPTED.'" *

The contemplated amendments were discussed at its next meeting, and an informal Committee was appointed from each party to arrange them. Another debate followed their report, in which the previously proposed restriction upon the Militia being called into another State, without the consent of the Legislature, was much discussed. Hamilton insisted, that, "the restriction was impolitic; that if the States intended to guard against standing armies, they ought to yield the General Government, the command of the Militia, in the most unqualified extent. To apprehend danger from it, while the States appointed the officers, was a novel idea, the offspring of the most unenlightened and distempered jealousy—that the experience of the late war had demonstrated the great utility of the Militia on special occasions, and the remissness of the State Legislatures in sending them forward to the aid of their neighbors, until the war had approached their own doors. The direction of the forces, and strength of the community, ought to be placed, with confidence and without limitation, in the hands of that body, which was to provide for the common defence. The most effectual way to secure amendments, is by recommending such only as are valuable, and can be sustained, after sober investigation." This restriction, nevertheless, passed by the entire voice of the opposition. The amendment prohibiting excises and direct taxes, without a previous requisition, was also approved. When the discussion of these amendments terminated, the question on the Constitution, in gross,

* Letter of Daniel Chipman to the Author.

came up.* Smith then admitted the impracticability of previous amendments, and avowed his purpose to vote for its ratification. He depicted the situation of the State, if not received by Congress—convulsions in its Southern counties—faction and discord in the rest—the strength of his own party, who were sincerely anxious for amendments, dissipated—their Union lost—and themselves dispersed, like sheep on a mountain. Others of the opposition concurred. Clinton, however, declared, that, "whatever his opinion might be, he stood there as the Representative of Ulster, that he should pursue what he believed to be the sense of his Constituents, and vote for a *conditional* adoption."

The vote was then taken on an amendment, offered by Jones, to substitute for the words "upon condition," "*in full confidence*," and it passed by a majority of two voices.

The next day, Lansing moved to annex to this ratification, a reservation of the right to withdraw. Hamilton declared, that the reservation could answer no good purpose, that it would awaken the pride and other passions of the sister States, was inconsistent with the Constitution, and would not be a ratification. Strong evidence of the apprehension he yet entertained of the final issue, is seen in a letter he about this time wrote to Madison.† "Every thing possible will yet be attempted to bring the party from that stand to an unconditional ratification. Let me know your idea upon the possibility of our being received on that

* In a cotemporary Journal, it is said—"The American Cicero" (Hamilton) "then arose, the force of whose eloquence and reasoning were irresistible. The objections that were made vanished before him. He remained an hour and twenty minutes on the floor. After which, Mr. S., with great candor, got up; and after some explanations, confessed, that Mr. H., by his reasoning, had removed the objections he had made."

† Hamilton's Works, i. 464–5.

plan. You will understand, that the only qualification will be the *reservation* of a right to recede, in case our amendments have not been decided upon in one of the modes pointed out by the Constitution, within a certain number of years, perhaps, five or seven. If this can, in the first instance, be admitted as a ratification, I do not fear any further consequences. Congress will, I presume, recommend certain amendments to render the *structure* of the Government more secure. This will satisfy the more considerate and honest opposers of the Constitution; and, with the aid of them, will break up the party." Madison was of the opinion, that, "a reservation of a right to withdraw, if amendments be not decided on under the form of the Constitution within a certain time, is a *conditional* ratification; that it does not make New York a member of the new Union, and consequently, that she could not be received on that plan. . . . The Constitution requires an adoption *in toto* and *forever*."

Smith followed Hamilton, in the debate. He avowed, that he would vote against such reservation. Hamilton then closed the discussion. He gave an eloquent exposition of the situation of New York, if out of the Union—that self-preservation would compel the General Government to reduce the State to unite. He indicated the evils to result from discontented minorities; the inequality of a contest by a single State with an organized government, when the ruling parties of the other States were federal—commanding the confidence of the Sea Coast, the great source of wealth, and wielding the mass of property. Where will you look for aid? If to Great Britain, will she afford it, unless with views of conquest? If to France, will she involve herself with the whole Republic? If the contest were equal, he asked, what must be the result of two great parties marshalled against each other? Who

would be the Leader? Whom would the people trust? Why should all these evils be risked, with the additional one of their great Sea Port, being embraced in the Union? What had been the past history of the country? The rejection of the impost begat the Convention—the rejection of the Constitution may beget a despotism. In the variety of opinions which exist as to government, the love of repose would unite all. Amid the various opinions respecting the mode of ratifying the Constitution, this peaceable expedient had been adopted. What responsibility will be incurred, if frustrated by us? Until the American revolution, Republican government had been disgraced. The situation of this country presented the most favorable theatre for a successful experiment. The *cause* of *Liberty* calls upon us to do nothing rashly."

This speech, of which these are merely the heads, closed with an elegant peroration, in which, in glowing terms, he enumerated the most distinguished patriots of the nation, as watching upon the issue of their deliberations. He called to their minds the heroes who had died to establish American liberty; pointed to their sister States, as appealing to their common dangers and common interests; declared, that the prospects of "mankind" were involved in the result, and invoked the influence of Heaven "upon the decision of that day." *

* Kent relates: "It was in the midst of that gloomy period, and just before the clouds began to disperse, and serene skies to appear and gladden the moral atmosphere of the place, that Hamilton made one of his most pathetic and impassioned addresses. He urged every motive and consideration that ought to sway the human mind, in such a crisis. He touched, with exquisite skill, every chord of sympathy, that could be made to vibrate in the human breast. Our country, our honor, our liberties, our firesides, our posterity were placed in vivid colors before us. He alluded to the distresses and national degradation which dictated the call for a General Convention, and he portrayed, in matchless style, the characters in that illustrious assembly, composed

The final question was then taken, and by a majority of three votes, the Constitution was adopted on the twenty-fifth of July. The Convention again met the next day; and, after a few observations by Clinton, to the effect, that, until another Convention was called to consider the amendments which had been recommended, the probability was, that the people who were opposed to the Constitution would not be satisfied; but, that he would endeavor, as far as was in his power, to preserve peace and good order. The Convention then, having executed a formal ratification, adjourned indefinitely.

During the last days of its session, the City of New York exhibited a scene of the most intense excitement. Congress hardly cared to deliberate. The citizens moved to and fro, awaiting anxiously a result, in which they felt that all was at stake. At each corner of the streets, the inquiry was, "what is the news?" and, along the wharves, dense masses were collected, waiting the approach of every sail. As though all their hopes were concentrated in him, the reply was, "Hamilton is speaking yet." "Hamilton is speaking yet." Late in the evening of the twenty-eighth of July, the happy result was announced. The bells pealed the joyful news. The cannon resounded from the Forts; and their grateful constituents, forming a procession through the city, fired a salute before the residence of each delegate, to whose exertions they were so much indebted.

The following day, Hamilton resumed his place in Congress, and presented the ratification of the Constitution by New York. His fellow-citizens resolved to cele-

of the wisest and brightest of our American statesmen. To discriminate largely, might be invidious; but it could not be so, he said, to select Franklin, revered by the wise men of Europe, and Washington, crowned with laurels and refulgent with glory."

brate this great event, which, with a wise augury, they foresaw, would raise their corporation of thirty thousand persons to become the great city of the Union—the metropolis of an Empire—the mart of the Western hemisphere.

In this celebration, all interests and classes united. The merchants—the traders—the learned professions—followed by a great concourse of artisans, in separate divisions, singing odes, which were scattered, as they passed along. Among the emblems, was an ensign with a flag representing the head of "WASHINGTON;" on the reverse, that of "HAMILTON." The printers attended a PRESS, bearing on high, a banner inscribed with the words, "PUBLIUS"—"Liberty of the Press"—"The Epoch of Liberty and Justice," in golden letters. The Chandlers bore a flag with *thirteen* stripes, where, again were seen united, the heads of "WASHINGTON," and of "HAMILTON." The sail-makers had a stage, with the emblematic ship "New Constitution." In the centre of a standard, was seen the figure of "HAMILTON," with the "Constitution" in his right hand, and the "Confederation" in his left—Fame, with her trumpet and laurels, to crown him. But the principal object in the pageant was, the Federal ship, "HAMILTON," a frigate, fully manned, saluted and saluting, telling forth the triumph of a NATION. A public feast, of which thousands partook, where, amid huzzas and toasts, re-echoed the name of "HAMILTON," closed this great festive day.

"That bright and golden age of the Republic," observes Chancellor Kent, a spectator of this interesting scene, "may now be numbered with the years beyond the flood; and, I am left, almost alone, to recall and enjoy the enchanting vision. The Convention combined the talents, experience, and weight of character, of some of

the most distinguished men in the State. Most of them had been disciplined in the discussions, services, and perils of the Revolution. There was no difficulty in deciding at once, on which side of the House, the superiority in debate existed; yet, in the ordinary range of the discussion, it was found, that the dignity, candor, and strength of Jay; the polished address and elegant erudition of Chancellor Livingston; the sagacity and exhaustless researches of Hamilton, were met with equal pretensions by their opponents—supported by the simplicity and unpretending good sense of Clinton; the sound judgment of Jones; the plausible deductions of Lansing, and the metaphysical mind and embarrassing subtleties of Smith. Hamilton maintained the ascendency on every question; and, being the only member present, who had signed the Constitution, he felt and sustained, most intrepidly, the weight of the responsibility which belonged to him, as the leader on the Federal side of the question.

"He was, indisputably, pre-eminent; and all seemed, as by common consent, to concede to him, the burden and the honor of the debate. Melancthon Smith, was, also, the most prominent and the most responsible speaker on the Anti-federal side of the Convention. There was no person to be compared with him in his powers of acute and logical discussion. He was Hamilton's most persevering and formidable antagonist, but he was worsted in every contest." * * "As, Hamilton had been a leading member of the National Convention, and a leading writer of the 'Federalist,' his mind had become familiar with the principles of the Federal Government, and with every topic of debate; and, he was prompt, ardent, energetic, and overflowing with an exuberance of argument and illustration.

"He generally spoke with great earnestness and ener-

gy, and with considerable, and sometimes, vehement gesture. His language was clear, nervous, and classical. His investigations penetrated to the foundation and reason of every doctrine and principle which he examined; and he brought to the debate a mind richly adorned with all the learning and precedents requisite for the occasion. He never omitted to meet, examine, and discover the strength or weakness, the truth or falsehood, of every proposition, which he had to contend with. His candor was magnanimous, and rose to a level with his abilities. His temper was spirited, but courteous, amiable, and generous; and he frequently made powerful and pathetic appeals to the moral sense and patriotism, to the fears and hopes of the Assembly; and painted, vividly, the difficulties and dangers of the crisis, in order to prepare their minds for the reception of the Constitution.

"The arguments used by Colonel Hamilton in the debates in the Convention, were substantially the same which he had before employed in the FEDERALIST. They could not well have been any other, for he had already urged, in support of the Constitution, all the leading considerations which led to the plan of it, and which guided the skill of the artists. The wisdom of the Commentator was now repeated, and enforced by the eloquence of the Orator.

"The style and manner of Smith's speeches were plain, dry, and syllogistic; and, it behooved his adversary to understand well the ground on which he stood, and the principles he advanced, or he might find it somewhat embarrassing to extricate himself from a subtle web of specious reasoning, unless, indeed, it was met by Hamilton's skill and strength, which nothing could resist."

CHAPTER LV.

During his exertions to induce the concurrence of New York, Hamilton's attention was called, by a letter from a gentleman of highly distinguished talents and character, to a subject, in various points of view, of great interest—the relations of Vermont to the new Government. In his reply, addressed to Nathaniel Chipman, afterwards a member of the Senate of the United States, he observed:

"Your brother delivered me your favor, which I received with pleasure, as the basis of a correspondence that may be productive of public good.

"The accession of Vermont to the Confederacy, is, doubtless, an object of great importance to the whole; and, it appears to me, that this is the favorable moment for effecting it upon the best terms for all concerned. Besides more general reasons, there are circumstances of the moment which will forward a proper arrangement. One of the first subjects of deliberation with the new Congress will be, the Independence of Kentucky, for which the Southern States will be anxious. The Northern, will be glad to send a counterpoise in Vermont. Then, mutual interests and inclinations will facilitate a proper result.

"I see nothing that can stand in your way, but the interfering claims under the grants of New York. As to

taxation, the natural operation of the new system will place you exactly where you might wish to be. The public debt, as far as it can prudently be provided for, will be, by the Western lands, and the appropriation of some general fund. *There will be no distribution of it to particular parts of the community.* The fund will be sought for in indirect taxation; as, for a number of years, and, except in time of war, direct taxes would be an impolitic measure. Hence, as you can have no objection to your proportion of contribution, as consumers, you can fear nothing from the article of taxation.

"I readily conceive, that it will be scarcely practicable to you to come into the Union, unless you are secured from claims under New York grants. Upon the whole, therefore, I think it will be expedient for you, as early as possible, to ratify the Constitution, upon condition, that Congress shall provide for the extinguishment of all existing claims to land, under grants of the State of New York, which may interfere with claims under the grants of the State of Vermont. You will do well to conform your boundary to that heretofore marked out by Congress; otherwise, insuperable difficulties would be likely to arise with this State.

"I should think it altogether unadvisable to annex any other condition to your ratification. For there is scarcely any of the amendments proposed, that will not have a party opposed to it; and, there are several that will meet with a very strong opposition; and it would, therefore, be highly inexpedient for you to embarrass your main object by any collateral difficulties.

"As I write in Convention, I have it not in my power to enlarge. You will perceive my general ideas on the subject. I will only add, that it will be wise to lay as lit-

tle impediment as possible in the way of your reception into the Union."

The approaching session of the Legislature of that State, in October, induced a second letter from the same source, which Hamilton thus answered:

"Your favor of the sixth of September has been duly handed to me, and I receive great pleasure from the hopes you appear to entertain of a favorable turn of affairs in Vermont, in regard to the new Government. It is certainly an object of mutual importance to yourselves and to the Union, and well deserves the best endeavors of every discerning and good man.

"I observe, with satisfaction, your opinion that Vermont will not make a point of introducing amendments (I mean as a condition of her accession). That ground would be the most hazardous which she could venture upon, as it is very probable, that such amendments as might be popular with you, would be deemed inadmissible by the friends of the system, who will doubtless be the most influential persons in the national councils; and, who would rather submit to the inconveniences of your being out of the Union, till circumstances should alter, than consent to any thing that might impair the energy of the Government. The article of taxation is, above all, the most delicate thing to meddle with; for as, *plenary* power in that respect must ever be considered as *the vital principle of government;* no abridgment or constitutional suspension of that power can ever, upon mature consideration, be countenanced by the intelligent friends of an effective national Government. You must, as I remarked in my former letter, rely upon the natural course of things, which, I am satisfied, will exempt you, in ordinary times, from direct taxation, on account of the difficulty of exercising it in so extensive a country, so pecu-

liarly situated, with advantage to the revenue or satisfaction to the people. Though, this difficulty will be gradually diminished, from various causes, a considerable time must first elapse; and, in the interim, you will have nothing to apprehend on this score. As far as indirect taxation is concerned, it will be impossible to exempt you from sharing in the burthen, nor can it be desired by your citizens. I repeat these ideas, to impress you the more strongly with my sense of the danger of touching this chord, and of the impolicy of perplexing the main object with any such collateral experiments, while I am glad to perceive that you do not think your people will be tenacious on the point.

"It will be useless for you to have any view in your act to the present Congress. They can, of course, do nothing in the matter. All you will have to do, will be to pass an act of accession to the new Constitution, on the conditions upon which you mean to rely. It will, then, be for the new Government, when met, to declare whether you can be received on your terms or not.

"I am sorry to find that the affair of boundary is likely to create some embarrassment. Men's minds everywhere, out of your State, are made up upon, and reconciled to that which has been delineated by Congress. Any departure from it must beget new discussions, in which all the passions will have their usual scope, and may occasion greater impediments than the real importance of the thing would justify. If, however, the further claim you state cannot be gotten over with you, I would still wish to see the experiment made, though with this clog; because I have it very much at heart that you should become a member of the Confederacy. It is, nowever, not to be expected, that the same disposition will actuate everybody. In this State, the pride of cer-

tain individuals has too long triumphed over the public interest; and, in several of the Southern States, a jealousy of Northern influence will prevent any great zeal for increasing, in the national councils, the number of Northern voters. I mention these circumstances (though I dare say they will have occurred to you) to show you the necessity of moderation and caution on your part, and the error of any sanguine calculation upon a disposition to receive you, at any rate. A supposition of this nature might lead to fatal mistakes.

"In the event of an extension of your boundary beyond the Congressional line, would it be impracticable for you to have commissioners appointed to adjust any differences which might arise? I presume, the principal object with you, in the extension of your boundary, would be to cover some private interests. This might be matter of negotiation.

"There is one thing which I think it proper to mention to you, about which I have some doubt—that is, whether a *legislative* accession would be deemed valid. It is the policy of the system, to lay its foundations in the *immediate consent of the people.* You will best judge how far it is safe or practicable to have recourse to a Convention. Whatever you do, no time ought to be lost. The present moment is, undoubtedly, critically favorable. Let it by all means be improved."

Of the original States, two had not yet adopted the Constitution—North Carolina and Rhode Island. The causes which operated against the Constitution in Virginia, had a more powerful influence in North Carolina.

Its seaboard, broken by numerous far projecting capes, and indented by intervening sounds, afforded little encouragement, either to commercial or agricultural enterprise. The parts capable of tillage were occupied by

planters, with their numerous slaves. These planters composed the most informed and independent portion of the inhabitants. The interior, separated by vast forests, and intersected by numerous, but not navigable streams, and extensive swamps, was held by a sparse, various, and dissimilar population. Of this, a large part had been driven, by the sterile soil, to the lonely labors of the woods; where, they led roaming, independent, and irregular lives—little controlled by the influences of society, or of education—cut off from the ordinary sources of information—easily prejudiced, and with prejudices hostile to any other than the Laws of the Forest. Early, as this State evinced her hostility to the exactions of Great Britain, this was far from being a universal feeling. In no other Colony, was the division of political sentiment greater—in no other was the contest so close and obstinate—in none, did it assume a more sanguinary and partisan character.

Among a people of a resolute temper, fertile in expedients, inured to hardships, regardless of danger, every individual was at times in arms, every village in its turn was the victim of some wild foray, every fording place was connected with some incident of horror, every stream had been stained with blood. From the calamities of this intestine war, a faithful narrative of which would be one continuous tale of bold adventure, and of unmitigated suffering, no domestic circle escaped.—Even, the weaker sex, were here compelled to see their relations shot at their very doors, and were driven out to traverse, unprotected, wide tracts of wilderness, to some place of uncertain refuge. "A country on the verge of ruin, a corrupt, or what is worse, Idiot Assembly—an indolent Executive, Treasurers without money, a military without exertion—punctilio superseding duty," is a picture of her

situation, in seventeen hundred and eighty-one, drawn by one of her firmest, though most calumniated patriots.* Thus the forms of Government were preserved, without its beneficial influences. The community was silent, every man was his own law, and his own avenger. A protracted warfare of such a character left too deep an incision in the State to be easily healed.

Poverty also had brought with it, its usual concomitant—oppression. Necessity had early compelled the collection of the most arbitrary of all impositions—a poll tax, payable in commodities; small as this was, it was the source of much discontent.

The efforts to relieve the people, and to sustain the war, led to frequent and large emissions of paper, which, before the termination of the contest, became of little value. This debased circulation, much of which was counterfeit, remained a legal tender until the peace. With these general causes, others concurred of a powerful influence. This Colony was, in seventy-six, largely indebted to British creditors. These remained in the State, adhered to the enemy, and headed and supported the marauding bands of Tories.

Humanity would almost hesitate to plead for the au-

* William Hooper, whose activity, at an early period of the Revolution, under circumstances, deeply interesting to the fame of North Carolina, was conspicuous, has been stigmatized by Jefferson as an Anti-Independent—an epithet, also applied by him, to Governors Jay, and Johnson of Maryland, both personal and political friends of Washington.

When the enemy took possession of Wilmington, Hooper was absent. His family resided there. His house was sacked, his library plundered, and all that was left, were a few articles of necessity saved by his wife. This lady was compelled to embark in a open boat with her daughter, at an unhealthy season, exposed to the insults of those turbulent times, with no other protection than a faithful slave, permission being refused to her to employ an escort. Thus vengeance was wreaked on the family of this traduced patriot.

thors of so much atrocity. Weak would be the disposition of the people to accept a Constitution, for which these men loudly clamored, and which appeared before them interposing, what they deemed, the severe demands of an inflexible justice. Their aversion to it, was increased by one of the greatest misfortunes which can befall any society—a strong and too well-founded suspicion of, and disrespect for a contentious judiciary—a repugnance which was augmented by the circumstance, that the most strenuous advocates of the Constitution were distinguished ministers of the law, Davie, Johnson, Iredell, Spaight, Maclaine, and Hooper, comprising the great mass of the information and intelligence of the State. At the head of the opposition, was Willie Jones, conspicuous, as one of the Founders of the State Constitution, active in its councils—possessing a most extensive influence from his knowledge of human nature, but otherwise of limited information, and confined vision. He was sustained by Spencer, Bloodworth and Macon.

The same policy, which had deferred to a late period, and had induced a simultaneous convocation of the States of Virginia and New York, influenced the Legislature of North Carolina.

The opposition called a Convention, at Hillsborough, on the twenty-first July, seventeen hundred and eighty-eight. As soon as the Convention was formed, Jones, aware of the strength of the adverse party, moved, that the question upon the Constitution should be immediately taken. This motion was rejected, and a wide debate followed. The objections raised by the other States of the South were here warmly urged, and ably met. In this conflict, Colonel Davie, the most distinguished soldier of his State, was also the most distinguished advocate of the Constitution. After a session of great interest, and only

ten days' duration, so precipitate was the discussion, it was resolved, by a vote of one hundred and eighty-four out of two hundred and sixty-eight members, to postpone acting upon the Constitution, until certain proposed amendments had been laid before Congress, and submitted to a second General Convention. Thus, it was not formally ratified, nor rejected. It will be remarked, that the letter of Jefferson urging its rejection by four States, was quoted, and relied upon as a sanction for this proceeding by one of his warmest political adherents.

Hooper, who had been much distinguished in the proceedings of the first Congress, was defeated in the election to the Convention. It is to be regretted, that a correspondence held with him, and with Governor Johnson, by Hamilton, urging the measures to be taken to induce the co-operation of this State, has not been obtained.

The result in North Carolina, was not unexpected, and occurred too late to produce any influence elsewhere. Of the numerous opponents of the new system, throughout the United States, a part had been influenced by honest fears of the extent of the powers conferred upon it. The more intelligent had abused these fears, from various motives, among which, a regard to their own political importance had much weight. The Constitution being adopted, they saw, in the jealousy of power they had so successfully fomented, a source of popularity of which they resolved to avail themselves. This motive, and an observance of appearances, alike prompted a persevering effort to induce the call of a SECOND GENERAL CONVENTION. A circular letter from the Convention of New York, was thought the fit mean of effecting their object.

Its influence on Rhode Island was felt. To induce the concurrence of that State, Hamilton wrote to Colonel

Olney, whose reply states, that the proposition to appoint a State Convention to consider the Constitution, was lost by a vote of nearly three to one, and by a similar vote, the call of a Second Federal Convention was passed.* A similar circular letter was also laid before the Assembly of Pennsylvania. A previous conference of a hostile State Legislature at Harrisburg, at which Gallatin, one of the most active opponents of the Federal policy, was present, had induced an expectation of that State concurring in this measure. But the proposition was rejected by a large vote. The same body subsequently refused to refer the circular letter of Virginia.

This important State, still evinced a resolute opposition. Resolutions for a second General Convention were submitted to its House of Delegates; a substitute was proposed, that Congress should recommend to the State Legislatures to ratify a Bill of Rights and several amendments. This substitute was rejected, and the original resolutions prevailed by a large majority—eighty-five to thirty-nine. On this occasion, Patrick Henry was conspicuous. His resolutions declared an apprehension of the Constitution, in its existing form, and that there were defects in it, which "involved all the great and inalienable rights of freemen." They were followed by a letter to Clinton, and a circular letter to the States, announcing their intended application to Congress, for *another* General Convention.

Edmund Randolph writes to Madison, "I confess to you, without reserve, that I feel great distrust of some of those, who will certainly be influential against the Government, and whom I suspect to be capable of making a wicked use of its defects. Do not charge me with undue suspicion, but, indeed, the management in some stages of

* Hamilton's Works, i. 484.

the Convention, created a disgustful apprehension of the views of some particular characters. I reverence Hamilton, because he was honest and open in his views." *

The Legislature of New York assembled in December, when, Lansing being chosen Speaker of the House, Clinton addressed them. He referred to the proceedings of the State Convention, and, in earnest terms, urged a revision of the Constitution. His recommendation was sanctioned by both branches of the Legislature.

The same question was presented to the Legislature of Massachusetts. It was referred to a committee, received the approbation of Hancock, and of a part of the Federalists.

Alarmed by the discussions to which it might give rise, Hamilton wrote to Sedgwick: "Your last letter but one, met me at Albany attending court, whence I am just returned. I am sorry for the schism you hint at among the Federalists, but I have so much confidence in the good management of the fast friends of the Constitution, that I hope no ill consequences will ensue from that disagreement. It will, however, be worthy of great care, to avoid suffering a difference of opinion on collateral points, to produce any serious division between those who have hitherto drawn together on the great National Question. Permit me to add, that I do not think you should allow any line to be run between those who wish to trust alterations to future experience, and those who are desirous of them at the present juncture. The rage for amendments is, in my opinion, rather to be parried by address, than encountered with open force—and, I should, therefore, be loth to learn, that your parties have been arrayed professedly upon the distinction I have mentioned. The mode in which amendments may best be made, and twenty

* September 3d, 1788.

other matters may serve as pretexts for avoiding the evil and securing the good."

While the opponents of the Constitution were directing their efforts to this object, its friends in Congress were engaged on two questions of importance—the preliminary measures to put the Government into operation, and the designation of a place for commencing its proceedings. As, in the original resolutions submitted to Congress, these questions were connected with each other, much delay ensued.

The possession of the Seat of Government was supposed to promise to the State in which it should be placed, exclusive of other, great political benefits.

In consequence of the mutiny at Philadelphia, this subject had engaged the attention of Congress, in the year seventeen hundred and eighty-three. Hamilton thought the discussion premature, and brought forward, at that time, resolutions postponing offers from Kingston on the Hudson, and Annapolis on the Chesapeake.

This question was resumed, after he had returned from its councils; and, at the end of many ballotings, some in favor of a site on the Potomac, others on the Delaware, an ordinance appointing commissioners to select a seat on the banks of the latter river, passed by the vote of eight states, Maryland, Virginia and the Carolinas dissenting. The dissatisfaction this ordinance produced, prompted efforts of conciliation, and at last a resolution was adopted for the erection of public buildings near Georgetown, while, to obviate temporary jealousies, alternate sessions of equal periods of not more than one year were ordered to be held, at Trenton and Annapolis.

This ordinance was not acted upon. Intent upon establishing the Capital within her own borders, the Con-

vention of Pennsylvania, after adopting the Constitution, passed a resolution to cede to the United States a Federal district. An act to carry the Constitution into operation, was reported in Congress, as early as July, eighty-eight. It was discussed during that, and the following month. The diversity of interests induced a hope, that New York would be selected as the temporary residence, a selection which Hamilton, not only supported, because it would gratify his immediate constituents, but swayed by a higher consideration; the probability, that the residence of Washington at that city, as President of the United States, would attract the popular feeling of the State to the National Government, and thus aid his efforts to diminish the influence of the party, with which he had thus far successfully contended.

Other considerations would prompt him to urge a temporary* residence, at New York. "Its exposed and eccentric position," he wrote, "will necessitate the early establishment of a permanent seat; and in passing South," he thought, "it highly probable, the Government would light upon the Delaware, in New Jersey. The Northern States do not wish to increase Pennsylvania, by an accession of all the wealth and population of the Federal city."

The discussions in Congress had disclosed the rival views of Virginia and Pennsylvania. The Potomac was too remote for the present population of the country, and the Northern States were jealous of Pennsylvania. He was unwilling to increase the power of either of the large States by superadding such an advantage; and, deprecating the ascendency of State influences over the National Councils, he preferred its being established in a small State.

Delaware was more vulnerable. New Jersey was

* Hamilton's Works, i. 471.

central, possessed few slaves, and was surrounded by a hardy population to protect the Capital of the Republic from the inroads of an enemy. These were weighty considerations, but they were resisted with much pertinacity. Madison wrote to Washington, "I own, I am much influenced by a view to the *final residence*, which I conceive, more likely to be properly chosen in Philadelphia than in New York. Judging from my own experience on this subject, I conclude that from motives of one sort or another, ten States, at least, will at any proper time be ready to remove from Philadelphia. The only difficulty, that can arise, will be that of agreeing on the place to be finally removed to; and it is from that difficulty alone, and the delay incident to it, that I derive my hope in favor of the banks of the Potomac."

"I am clearly in sentiment with you," Washington replied, "that the longer the question respecting the *permanent seat* of Congress remains unagitated, the greater certainty there will be of its fixture in a central spot. But, not having the same means of information and judging that you have; it would have been a point with me, whether a *temporary* residence of that body at New York, would not have been a less likely mean of keeping it *ultimately* from the centre (being further removed from it) than if it was to be at Philadelphia, because, in proportion as you draw it to the centre, you lessen the inconvenience, and of course the solicitude of the Southern and Western extremities; and when, to these are superadded the acquaintances and connections which naturally will be formed—the expenses which more than probably will be incurred for the accommodation of the public officers —with a long train of et ceteras, it might be found an arduous task to approach nearer the axis thereafter. These, however, are first thoughts, and may not go

to the true principles of policy, which governs in this case."

Doubts arising, whether the delegates from North Carolina and Rhode Island, those States not having ratified the Constitution, could vote upon this subject without being committed, Hamilton, on the seventh of August, proposed a declaratory resolution, excluding such constructive effect. But those delegates finally declining to vote, this motion he withdrew, and on the thirteenth of September he attained his object. An ordinance was then passed, but, with two dissenting voices, designating the first Wednesday of January following, for the appointment of Presidential electors; the first Wednesday of February, as the day, on which, they were to give their votes; and the first Wednesday of March, as that, on which, the Constitution was to go into effect, and New York, as the Seat of Government.

So great were the apprehensions, lest this selection would disappoint the ambition of Virginia, that her opponents became the objects of the most groundless imputations. The concurrence of the Federalists of New York in the circular address of Clinton was pronounced a determination to purchase an immediate ratification in any form, and at any price, rather than disappoint its city of a chance for the new Congress. The choice was declared to be "the result of the dilemma of yielding to its advocates, or strangling the Government in its birth." "I begin," Madison writes, "now, to accede to the opinion, which has been avowed for some time by many, that the circumstances involved in the ratification of New York will prove more injurious than a *rejection would have done.*" [*]

* Madison to Washington, 24th August, 1788.—General Harry Lee took a calmer view—September 13th, 1787. "The Southern gentlemen," he ob-

Washington did more justice to the Federalists of New York. "Although," he writes, "I could scarcely conceive it possible after ten States had adopted the Constitution, that, New York, separated as it is, from the other three, and peculiarly divided in sentiments as it is, would withdraw from the Union; yet, considering the great majority, which appeared to cling together, in the Convention, and the decided temper of the leaders, I did not, I confess, see the means by which it was to be avoided. The exertion of those, who were able to effect this great work, must have been equally arduous, and meritorious."

Although, the Act to organize the new Government, passed Congress, on the thirteenth of September, a month elapsed before a proclamation was issued by Clinton, convening the Legislature of New York; and the time appointed for their meeting was less than a month from the period within which the Electors of President were to be chosen.

The Senate was now under the influence of Schuyler; the Assembly largely Democratic.

A bill to put the Constitution into operation was brought forward, in the latter body. It proposed to choose the Electors of President by joint ballot of both Houses. This proposition, though jealously opposed, prevailed in the Assembly. It was rejected in the Senate, who insisted, that each House was entitled to a negative upon the other. Various conferences were had, and compromises suggested. After frequent debate, it was

served, "did not accord in the place of temporary residence, from a discordance in sentiment of its effect, on the establishment of the permanent Seat of Government. Some considered this city, others a more Southern position, as the most favorable theatre to negotiate the determination of the ten miles square—many plausible, and some cogent reasons are adducible in support of either opinion, and time only can show which is founded in propriety."

ascertained, that neither party would recede. New York was, by this dissension, deprived of a voice in the election of the President—deprived of the exercise of a right vested in her people by the Constitution; the choice of electors by their own free suffrages—a course, which Schuyler stated in the Senate, he would have preferred; and which Hamilton declared, was a privilege which it was of the greatest importance, should be "in the hands of the people." But, had the election been by them, it was known to the Democratic party, that the suffrages of New York would have been given to Washington. As a consequence of the same discord, she was not represented in the first session of the Senate.* Thus early was manifested the defective organization of the General Government; rendering the existence of one of its great departments dependent on the action of bodies, over which it had no control—of State Legislatures, antagonistic by their position—easily excited to hostility, often not appeased without a sacrifice of essential rights of the nation. These consequences Hamilton foresaw, and would have averted, by his plan of a Constitution; in which, reposing solely on the only legitimate source of power—the people—he confided the choice of Senators to electors chosen by them, for that express purpose.

An effort was made to provide by law, that the Representatives in Congress should be elected by general ticket, and not by districts. This was defeated.†

While these subjects were under discussion, the election of Delegates for the unexpired term of the Congress

* Knox wrote Washington,—"The Federal Senate of New York exhibited an honorable firmness—hazarding the removal from New York rather than saddle the Government with two Anti-federal Senators."

† Massachusetts, New Hampshire, and South Carolina, also elected their members of Congress in single Congressional districts.

of the Confederation took place. The friends of the Constitution supported Hamilton; but, in joint ballot, the ticket, of which he was the head, was defeated. Thus, his first and only defeat was the punishment for his advocacy of the Constitution. In Virginia, the same violence which had been shown as to the call of a second Convention, was manifested in relation to the measures necessary for organizing the General Government. Although, her Legislature passed a law to regulate the election of Representatives—dividing the State into districts, it also enacted, that it was incompatible for any officer of the State to perform official functions under the authority of the United States—an act, which, had it been enforced, would have compelled the National Government to employ Ministerial and Judicial officers within each State, for every branch of the National affairs, and would thus have rendered the Constitution extremely odious.

Early in the session of this Legislature, Madison, being proposed to be continued in Congress until the new Government commenced, was rejected by a large vote. He was subsequently nominated, as a Senator of the United States. When the vote was about to be taken, Patrick Henry made a pointed attack upon him, founded upon his efforts in support of the Constitution: Lee and Grayson were chosen Senators.

Defeated as a Senator, Madison resolved to present himself as a candidate for a seat in the House of Representatives. Monroe was his competitor. To allay the opposition, Madison found it necessary to address an explanatory letter to the district which he sought to represent. In this address, while he avowed his attachment to the Constitution, he acknowledged the fitness of amendments, and pledged himself to promote them in the constitutional mode. "I have," he wrote to Wash-

ington, "pursued my pretensions much farther than I had premeditated, having not only made use of epistolary means, but actually visited two counties." He was elected by a close vote. Thus early and pointed was the admonition of Virginia—that to her prejudices, he must sacrifice either his principles, or his ambition.

It has been seen, that New York had, at the express instance of Clinton, recommended a Second General Convention. The determination to pursue this measure, after Pennsylvania and Massachusetts had both rejected the proposal, was regarded by the friends of the Constitution as evidence of an inflexible hostility to it, which must be resisted by every effort.

Connected with the other proceedings of the Legislature, it was the signal in New York, for a zealous opposition to the re-election of Clinton, the term of whose office was about to expire.

Chief Justice Morris was induced to relinquish his pretensions, and, at a public meeting in the City of New York, Robert Yates was nominated as a candidate for the office of Governor. The motives for this nomination were set forth in an address from the pen of Hamilton.* "The *People* of this State," he said, "are the *Sovereigns* of it;" and, they are called upon to exercise this high act of sovereignty, so, "that the Chief Magistrate of the State should be free from all temptation, wantonly to perplex or embarrass the National Government,—whether that temptation should arise from a preference of partial confederacies; from a spirit of competition with the National Rulers for personal pre-eminence; from an impatience of the restraints of National authority; from the fear of a diminution of power and emoluments; from re-

* Hamilton's Works, ii. 474.

sentment or mortification, proceeding from disappointment, or any other cause."

The importance of assuaging the controversies which had long divided the State was inculcated. It was urged that all should join in supporting the Constitution, and all unite in a reconsideration of the parts which had been objected to, so as to provide, if requisite, "such additional securities to the liberties of the people, as shall be compatible with the salutary and necessary energy of an efficient National Government." To effect these objects, he said, it was essential, "that the Chief Magistrate should be a man of moderation, sincerely disposed to heal, not to widen existing divisions—to promote conciliation, not dissension—to allay, not to excite the fermentations of party spirit, and to restore that cordial good will and mutual confidence which ought to exist among a people bound to each other by all the ties which connect members of the same society.

Notwithstanding the weight of his official influence, his long possession of office, and the distrust which existed as to the National Government, Clinton succeeded by a very small majority.*

To produce this change in the popular sentiment, Hamilton not only travelled through part of the State, but was the author of a series of essays, embracing a searching examination of the Governor's political life.†

By great exertions, of the six Representatives in Congress allotted to New York, the Federalists elected four. To attain this result, Hamilton published another address. While these efforts were made by him to give to the Government, in its outset, a vigorous support, a question

* Of 12,353 votes—his majority was 429.

† Letters of H. G., Hamilton's Works, vi. 600.

of great moment occupied his mind—who would be the President?

It has been seen, he had anticipated that Washington would command the suffrages of a vast majority of the Nation. This was obvious. It was a selection upon which Hamilton felt much would depend, though he did not conceal from his confidential friends his regret, that a precedent would thus be given for the preference of a soldier, as the First Magistrate of the Republic.

But his solicitude was whether Washington would accept this high station. Judging from the motives which have governed the great majority of eminent men, few can believe, that, any individual, enjoying so fully the confidence of his countrymen, could have entertained any sincere hesitation upon this question, or could doubt that so commanding a position would have been the object of his most ardent desires. But they form an imperfect judgment of his character and situation.

The success of the experiment of a Government so new and complicated, would, to a person of less experience, be extremely doubtful. To one who had felt, as he had, the evils of a Federal system, it would seem scarcely to have left room for hope. "If I should conceive myself," he said, "in a manner constrained to accept, I call Heaven to witness, that this very act would be the greatest sacrifice of my personal feelings and wishes, that ever I have been called upon to make. It would be to forego repose and domestic enjoyment, for trouble, perhaps, for public obloquy; for, I should consider myself as entering upon an unexplored field, enveloped on every side with clouds and darkness."

No man better knew the character of the late Commander-in-chief—no man measured him more accurately

—no man did more justice to his "eminent and excellent qualities," and none was more deeply impressed with the sincerity of his scruples, than Hamilton.

Unwilling as he was, to obtrude himself upon his attention, he felt, that these scruples must be overcome, and, soon after New York had ratified the Constitution, he wrote to him: *

"Captain Cochran, of the British Navy, has requested my aid in recovering a family watch, worn by his brother, who fell at Yorktown. In compliance with his request, I have written the letter herewith, which I take the liberty to convey through you, in hope, that if you see no impropriety in it, you would add your influence to the endeavor to gratify Captain Cochran. It is one of those things in which the affections are apt to be interested beyond the value of the object, and in which one naturally has an inclination to oblige." Having mentioned the transmission of a copy of the "Federalist," he added—"I take it for granted, sir, you have concluded to comply with what will, no doubt, be the general call of your country in relation to the new Government. You will permit me to say, that it is indispensable you should lend yourself to its first operations. It is to little purpose to have *introduced* a system, if the weightiest influence is not given to its firm *establishment* in the outset."

Adverting to the "Federalist," Washington remarked in his reply, "When the transient circumstances and fugitive performances which attended this crisis shall have disappeared, that work will merit the notice of posterity, because in it are candidly discussed the principles of Freedom, and the topics of Government, which will always be interesting to mankind, so long as they shall be connected in civil society." He added, "The circular

* August 13th, 1788.

letter from your Convention, I presume, was the equivalent by which you obtained an acquiescence in the proposed Constitution. Notwithstanding I am not very well satisfied with the tendency of it, yet the Federal affairs have proceeded, with few exceptions, in so good a train, that I hope the political machine may be put in motion without much effort or hazard of miscarrying. On the delicate subject with which you conclude your letter, I can say nothing, because the event alluded to may never happen, and because, in case it should occur, it would be a point of prudence to defer forming one's ultimate and irrevocable decision, so long as new data might be afforded for one to act with the greater wisdom and propriety. I would not wish to conceal my prevailing sentiment from you. For you know me well enough, my good sir, to be persuaded that I am not guilty of affectation, when I tell you, it is my great and sole desire to live and die in peace and retirement on my own farm. Were it even indispensable, a different line of conduct should be adopted, while you and some others, who are acquainted with my heart, would *acquit*, the world and posterity might probably *accuse* me of *inconsistency* and *ambition*. Still, I hope, I shall always possess firmness and virtue enough to maintain (what I consider the most enviable of all titles) the character of an *honest man*, as well as prove (what I desire to be considered in *reality*), that I am with great sincerity and esteem, dear sir, your friend."

The following reply was given—Hamilton to Washington:

"Dear Sir:—Your Excellency's friendly and obliging letter, of the twenty-eighth ult., came safely to hand.

"I should be deeply pained, my dear sir, if your scruples in regard to a certain station should be matured into a resolution to decline it; though I am neither surprised

at their existence, nor can I but agree in opinion that the caution you observe, in deferring an ultimate determination, is prudent. I have, however, reflected maturely on the subject, and have come to a conclusion, (in which I feel no hesitation,) that every public and personal consideration will demand from you an acquiescence in what will *certainly* be the unanimous wish of your country. The absolute retreat which you meditated at the close of the late war was natural and proper. Had the Government produced by the Revolution, gone on in a *tolerable* train, it would have been most advisable to have persisted in that retreat. But I am clearly of opinion, that the crisis which brought you again into public view, left you no alternative, but to comply; and I am equally clear in the opinion, that you are, by that act, *pledged* to take a part in the execution of the Government. I am not less convinced, that the impression of this necessity of your filling the station in question, is so universal, that you run no risk of any uncandid imputation, by submitting to it. But, even if this were not the case, a regard to your own reputation, as well as to the public good, calls upon you, in the strongest manner, to run that risk.

"It cannot be considered as a compliment to say, that on your acceptance of the office of President, the success of the new Government, in its commencement, may materially depend. Your agency and influence will be not less important in preserving it from the future attacks of its enemies, than they have been in recommending it, in the first instance, to the adoption of the people. Independent of all considerations drawn from this source, the point of light in which you stand at home and abroad, will make an infinite difference in the respectability with which the Government will begin its operations, in the alternative of your being, or not being, at the head

of it. I forbear to urge considerations, which might have a more personal application. What I have said will suffice for the inferences I mean to draw.

"*First.* In a matter so essential to the well-being of society, as the prosperity of a newly-instituted Government, a citizen of so much consequence as yourself to its success, has no option but to lend his services, if called for. Permit me to say, it would be inglorious in such a situation not to hazard the glory, however great, which he might have previously acquired.

"*Secondly.* Your signature to the proposed system, pledges your judgment for its being such an one, as, upon the whole, was worthy of the public approbation. If it should miscarry (as men commonly decide from success, or the want of it), the blame will, in all probability, be laid on the system itself; and the framers of it will have to encounter the disrepute of having brought about a revolution in government, without substituting any thing that was worthy of the effort. They pulled down one Utopia, it will be said, to build up another. This view of the subject, if I mistake not, my dear sir, will suggest to your mind greater hazard to that fame, which must be, and ought to be, dear to you, in refusing your future aid to the system, than in affording it. I will only add, that, in my estimate of the matter, that aid is indispensable.

"I have taken the liberty to express these sentiments, to lay before you my view of the subject. I doubt not, the considerations mentioned have fully occurred to you, and, I trust they will, finally, produce in your mind the same result which exists in mine. I flatter myself, the frankness with which I have delivered myself, will not be displeasing to you. It has been prompted by motives which you would not disapprove."

Washington answered:—"MOUNT VERNON, October third, seventeen hundred and eighty-eight. DEAR SIR:—In acknowledging the receipt of your candid and friendly letter of ——, by the last post, little more is incumbent on me, than to thank you sincerely for the frankness with which you communicated your sentiments, and to assure you, that the same manly tone of intercourse will always be more than barely welcome. Indeed, it will be highly acceptable to me. I am particularly glad, in the present instance, you have dealt thus freely and like a friend.

"Although, I could not help observing, from several publications and letters, that my name had been sometimes spoken of, and that it was possible, the *contingency*, which is the subject of your letter, might happen; yet, I thought it best to maintain a guarded silence, and to lack the *counsel* of my best friends (which I certainly hold in the highest estimation) rather than to hazard an imputation unfriendly to the delicacy of my feelings. For, situated as I am, I could hardly bring the question into the slightest discussion, or ask an opinion even in the most confidential manner, without betraying, in my judgment, some impropriety of conduct, or without feeling an apprehension, that a premature display of anxiety might be construed into a vain-glorious desire of pushing myself into notice, as a candidate. Now, if I am not grossly deceived in myself, I should unfeignedly rejoice, in case the electors, by giving their votes in favor of some other person, would save me from the disagreeable dilemma of being forced to accept or refuse. If that may not be, I am, in the next place, earnestly desirous of searching out the truth, and of knowing, whether there does not exist a probability, that the Government would be just as happily and effectually carried into execution, without my aid, as

with it. I am *truly* solicitous to obtain all the previous information, which the circumstances will afford, and to determine (when the determination can, with propriety, be no longer postponed), according to the principles of right reason, and the dictates of a clear conscience, without too great a reference to the unforeseen consequences, which may affect my person, or reputation. Until that period, I may fairly hold myself open to conviction; though I allow your sentiments to have weight in them; and, I shall not pass by your arguments without giving them as dispassionate a consideration as I can possibly bestow on them.

"In taking a survey of the subject, in whatever point of light I have been able to place it, I will not suppress the acknowledgment, my dear sir, that I have always felt a kind of gloom upon my mind as often as I have been taught to expect I might, and perhaps, must, ere long, be called to make a decision. You will, I am well assured, believe the assertion (though I have little expectation it would gain credit from those who are less acquainted with me), that, if I should receive and act under the appointment, the acceptance would be attended with more diffidence and reluctance than ever I experienced before in my life. It would be, however, with a fixed and sole determination of lending whatever assistance might be in my power, to promote the public weal, in hopes that, at a convenient and an early period, my services might be dispensed with, and that I might be permitted, once more, to retire—to pass an unclouded evening, after the stormy day of life, in the bosom of domestic tranquillity.

"But why these anticipations? If the friends of the Constitution conceive, that my administering the Govern-

ment will be the means of its acceleration and strength, is it not probable, that the adversaries thereof may entertain the same ideas, and, of course, make it an object of opposition? That many of this description will be amongst the Electors, I have no more doubt than I have of the part they will act at the election, which will be adverse to the choice of any character who, (from whatever cause,) would be likely to thwart their views. It might be impolitic, perhaps, in them to make this declaration *previous* to the election; but I shall be out in my conjectures, if they do not act conformably thereto, at it; and, prove that, all the *seeming* moderation by which their present conduct is marked, is calculated to lull and deceive. Their plan of opposition is systemized, and a regular intercourse between the leaders of it in the several States (I have much reason to believe) is formed to render it more effectual. With sentiments of sincere regard and esteem, etc."

In the Postscript to a subsequent letter, Hamilton remarked—"Your last letter on a certain subject I have received. I feel a conviction, that you will finally see your acceptance to be indispensable. It is no compliment to say that no other man can sufficiently unite the public opinion, nor can give the requisite weight to the office, in the commencement of the Government. These considerations appear to me of themselves decisive. I am not sure, that your refusal would not throw every thing into confusion. I am sure, that it would have the worst effect imaginable. Indeed, as I hinted in a former letter, I think, circumstances leave no option."

While such was the general sentiment of the American people, the party opposed to the Constitution, which, it has been remarked, embraced most of the individuals who had composed the Cabal of Gates, saw in Washington's

signature to that instrument, a new source of hostility to him.

They would gladly have directed their influence in favor of some other individual, and, for a time, the pretensions of Franklin were discussed in private circles. But, the incomparably superior claims of Washington silenced this purpose, which there is no evidence was encouraged by Franklin, whose extreme age would alone have presented an insuperable objection.

Indeed, the suggestion was at the time only noticed, because, it was understood, to have the countenance of men warm in the interests of France, who perceived that an United Government of adequate powers must soon make solid arrangements with Great Britain, as being necessary to the commercial prosperity of this country.

The Ministry of France saw this result. Such a government they had early deprecated, for the reason, that, the "views and affections of the United States will be very versatile, and that they cannot *count* on them, if ever there happen new discussions with England." They were only deterred from opposing the measures to establish the Constitution, by an apprehension of the consequences of such an interference. In the instructions to De Moustier, given a few days* after the Federal Convention had adjourned, it is stated.—"The Count will have seen in the correspondence of the Sieur Otto, that the Americans are occupied with a new Constitution. This object interests, but weakly, the politics of the King. His Majesty thinks, on the one hand, that these deliberations will not succeed, on account of the diversity of affections, of principles, and of interests of the different provinces. On the other hand, that it suits France, that the United States should remain in the present state, because,

* September 30, 1787.

if they should acquire the consistence of which they are susceptible, they would soon acquire a force, or a power which they would be very ready to abuse—notwithstanding, the Minister will be perfectly passive, and neither show himself for or against the new arrangement."

The selection of a name, to be associated with Washington, as Vice-President, was also a subject of interest.

The only useful motive to the creation of this office, would seem to be, to provide a substitute, in the contingency of a vacancy, for a President—thus avoiding the necessity of a new election. This object could have been attained in a different mode, without incurring the dangers which, in the progress of this government, may be found incident to an office, the natural centre of Cabal-faction and civil war.*

Perhaps, it originated in a desire to preserve an analogy to the State Constitutions, in their institution, of a Lieutenant Governor; but more probably, to meet the prejudices which prevailed as to a single Executive; and to satisfy geographical jealousies, by giving, as may have been supposed, a sectional Representative in that important department of the Government, and a sectional influence in the Senate. It may also have been intended to secure the succession, in case of a vacancy, to a citizen of a different State from that which gave the first Magistrate. These considerations will be seen to have governed, at this time, in the selection of the candidate for the Vice-Presidency.

South Carolina had early adopted the Constitution, and presented several individuals of distinguished merit, but like Virginia, was a planting State; and was of inferior importance.

* "Are we," Adams observed in the Senate, "the two Kings of Sparta, the two Consuls of Rome, or the two Suffetes of Carthage"?

Pennsylvania had strong claims from her local position and political weight, but none of her citizens aspired to that station.

New York, it was known, would have presented a hostile candidate; and, in the general opinion, Massachusetts, by her exertions, her influence, her wealth, and her population, was entitled to the preference. But, in that State, the sphere of selection was circumscribed. Hancock may have indulged the hope of being President. Samuel Adams first opposed the Constitution, ultimately assented to it. He was, therefore, without the confidence either of its friends or of its enemies; and his nomination must have been offensive to Washington. Knox was thought of, but he also was a soldier.

In this divided state of opinion, John Adams arrived in the United States. He had many advocates. His position as Foreign Minister had kept him prominently before the people. Though absent during its discussions, his sentiments were in favor of the Constitution, in support of which he had written—a circumstance, that engaged the good feeling of the Federalists. While, the uncertainty of his opinions on many leading questions—his hostility to the Cincinnati—and his unhappy jealousy of Washington, would recommend him to the Democrats.

A belief that Massachusetts was much indebted to his exertions in the negotiation as to the Fisheries, also added to his popularity in a State, which had felt and cherished his impulsive temperament.

But fears were entertained lest Washington might have prejudices against him,* and assurances were given to him of Adam's sincere support of the Constitution. Washington, who understood Adams, replied, cautiously, "Having taken it for granted, that the person selected for

* Lincoln to Washington. Washington's Writings, vol. ix., p. 555.

that important place, would be a true Federalist, in that case, he was altogether disposed to acquiesce in the prevailing sentiments of the electors, without giving any unbecoming preference, or incurring any unnecessary ill will."

Other men of influence, aware, though not to their full extent, of the intrinsic and vital defects of his character, paused as to the selection of Adams. Hamilton, writing to Theodore Sedgwick, lately a member of the Massachusetts Convention, in relation to the recent decision of Congress, as to the seat of Government, observed:—"I thank you, my dear Sir, for your obliging congratulations on the event, towards effecting which, your aid as a joint laborer was so essential: I hope, experience may show, that while it promotes the interest of this place, it will not be incompatible with public good. We are making efforts to prepare handsome accommodations for the session of the New Congress.

"On the subject of Vice-President, my ideas have concurred with yours, and I believe Mr. Adams will have the votes of this State. He will certainly, I think, be preferred to the other gentleman. Yet, *certainly* is perhaps too strong a word. I can conceive, that the other, who is supposed to be a more pliable man,* may command Anti-Federal influence.

"The only hesitation in my mind, with regard to Mr. Adams, has arisen within a day or two, from a suggestion, by a particular gentleman, that he is unfriendly in his sentiments to General Washington. Richard H. Lee, who will probably, as rumor now runs, come from Virginia, is also in this style. The Lees, and Adamses, have been in the habit of uniting; and, hence, may spring up a cabal very embarrassing to the Executive, and of course,

* Hancock.

to the administration of the Government. Consider this, sound the reality of it, and let me hear from you. What think you of Lincoln or Knox? This is a flying thought."

"Mr. Adams," Sedgwick answered, "was formerly infinitely more democratical than at present, and possessing that jealousy which always accompanied such a character, he was averse to repose such unlimited confidence in the Commander-in-chief, as then was the disposition of Congress. Mr. Adams is not among the number of my particular friends, but, as a man of unconquerable intrepidity, and of incorruptible integrity, as greatly experienced in the interests and character of this country, he possesses my highest esteem. * * * The minds of all men here, seem to be fixed either on Adams, or Hancock."

Inquiries were made and assurances given, that Adams would strenuously oppose the calling a Second Convention, and that his policy as to the establishment and credit of the Government, were opposite those of Richard Henry Lee. "A greater knowledge of the world," it was hoped, "had cured him of his old party prejudices," and the effect of disappointment in rendering him, if not hostile, lukewarm to the Constitution, it was feared, "would throw a pernicious weight in the Anti-Federal scale." * On these grounds the Southern States were urged to unite in his support.

Madison writing to Jefferson, observes, "South Carolina may think of Mr. Rutledge. The only candidates in the Northern States, brought forward with their known consent, are Hancock and Adams; and, between these, it seems probable, the question will lie. Both of them are objectionable, and would, I think, be postponed by the general suffrage to several others, if they would accept

* William Duer to Madison.

the place. Hancock is weak—ambitious—a courtier of popularity,—given to low intrigue, and lately reunited by a factious friendship with Samuel Adams. John Adams has made himself obnoxious to many, particularly in the Southern States, by the political principles avowed in his book. Others, recollecting his cabal, during the war, against General Washington—knowing his extravagant self-importance, and considering his preference of an unprofitable dignity to some place of emolument, better adapted to private fortune, as a proof of his having an eye to the Presidency, conclude that he would not be a very cordial friend to the General, and that an impatient ambition might even intrigue for a premature advancement. The danger would be the greater, if particular factious characters, as may be the case, should get into the public councils. Adams, it appears, is not unaware of the obstacles to his wish, and, through a letter to Smith, has thrown out popular sentiments as to the proposed President."

Soon after, Hamilton wrote to Madison: "On the whole, I have concluded to support Adams, though I am not without apprehensions on the score we have conversed about. My principal reasons are these: *First.* He is a declared partisan of deferring to future experience the expediency of amendments in the system, and (although I do not altogether *adopt* this sentiment) it is much nearer my own than certain other doctrines. *Secondly.* He is certainly a character of importance in the Eastern States; if he is not Vice-President, one of two worse things will be likely to happen. Either he must be nominated to some important office, for which he is less proper, or will become a malcontent, and give additional weight to the opposition to the Government. As to Knox, I cannot persuade myself that he will incline to the appointment.

He must *sacrifice* emolument by it, which must, of necessity be a *primary* object with him. If it should be thought expedient to endeavor to unite in a particular character, there is a danger of a different kind to which we must not be inattentive—the possibility of rendering it doubtful, who is appointed President. You know, the Constitution has not provided the means of distinguishing, in certain cases, and it would be disagreeable, even, to have a man treading close upon the heels of the person, we wish, as President. May not the malignity of the opposition be, in some circumstances, exhibited, even, against him? Of all this, we shall best judge, when we know who are our Electors; and, we must, in our different circles, take our measures accordingly. I should console myself for what you mention respecting yourself, from a desire to see you in one of the Executive departments, did I not perceive, the representation will be defective in characters of a certain description. Wilson is, evidently, out of the question. King tells me, he does not believe he will be elected into either House. Gouverneur Morris set out to-day for France. If you are not in one of the branches, the Government may sincerely feel the want of men, who unite to zeal, all the requisite qualifications for parrying the machinations of its enemies. Might I advise, it would be, that you bend your course for Virginia. Affectionately yours." *

While this selection remained in suspense, the opponents of the Constitution brought forward Clinton, as a candidate; without hope of success, but, as a mean of rallying their party, and establishing a systematic opposition.

All other considerations, in the minds of the support-

* Hamilton's Works, i. 488. Nov. 23, 1788

ers of the Government, yielded to the necessity of defeating their attempt; and, Adams received the cordial support of those, who, under other circumstances, would have opposed him. The state of this question is shown in the following letter from Hamilton:

"I thank you for your two letters of the fourth and seventh instant, which arrived here during my absence at Albany, from which place I have but recently returned. I believe you may be perfectly tranquil on the subject of Mr. Adams' election. It seems to be certain, that all the middle States will vote for him to Delaware inclusively, and probably, Maryland.

"In the South, there are no candidates thought of, but Rutledge, and Clinton. The latter will have the votes of Virginia, and it is *possible*, some in South Carolina. Maryland will certainly not vote for Clinton; and New York, from our Legislature having by their contentions let slip the day, will not vote at all. For the last circumstance, I am not sorry, as the most we could hope, would be to balance accounts, and do no harm. The Anti-Federalists incline to an appointment, notwithstanding; but, I discourage it with the Federalists.

"Under these circumstances, I see not how any person can come near Mr. Adams, that is, taking for granted, that he will unite the votes in New Hampshire and Massachusetts. I expect, that the Federal votes in Virginia, if any, will be in favor of Adams.

* * * * * * *

"On many accounts, indeed, it appears to be important, that there should be an appearance of zeal and punctuality, in coming forward to set the Government in motion.

"I shall learn, with infinite pleasure, that you are a Representative. As to me, this will not be the case; I

believe, from my own disinclination to the thing. We shall, however, I flatter myself, have a couple of Federalists."

In the first canvass, under the present Government, it was of the greatest importance to guard against any intrigue of its adversaries, by which Adams might compete with Washington. This was the more necessary, as the Anti-Federalists, to secure Clinton's election, as Vice-President, declared, that they would unite their votes upon Adams; the object of this declaration being, to divert the vote of New England from Adams to Clinton, under the apprehension, that their vote might defeat the election of Washington. To prevent this, as he had previously intimated would be expedient, Hamilton exerted his influence with his friends. This precaution gave dire offence to Adams; and excited a rancor in his breast against the authors of it, which was only smothered for a time.*

* In the life of Adams, by C. F. Adams, the course pursued, wholly forgetful of the great motive, is called "a refinement of policy"—and the "*mode*' used, is called "*clandestine;*" and said to be "ominous of *imperfect faith.*" It is to be recollected, that there had been, and there was, no nomination of Adams by any party or body of men; and there could be no "imperfect faith," because there had been no faith pledged by any person, or to any person or persons. The question was entirely open. As to the *mode*, how any co-operation for so important an object—the placing the election of Washington beyond all hazard—could be otherwise than by a correspondence between leading individuals, it is as difficult to conceive; as it is to imagine, why it should be pronounced "*clandestine.*" In respect to so immense a question, as the successful initiation of a government, would a *public* appeal have been safe? Upon what principle would it have been proper or neccessary, or decorous?

At a late period of his life, Adams wrote: "Hamilton caused it to be propagated in the Northern States, that Virginia would not vote for Washington, and, in the Southern States, that New England would not vote for Washington; or, at least, that their votes would not be unanimous, at the same time, that there was great probability there would be a unanimous vote for Adams; and, that, therefore, the Electors must throw away so many of their

The reply of Colonel Wadsworth to a letter of Hamilton, states, that Connecticut had "given her vote agreeably to his wishes," being a full vote for Washington, and two less, for Adams. Maryland threw away her votes on Colonel Harrison, and South Carolina on Rutledge. From the same commanding motive, other States pursued a similar course. The only votes for Adams, south of Pennsylvania, were five from Virginia.†

The elections having been held in all the States which had adopted the Constitution, with the exception of New York, the Congress of the United States ought to have assembled on the first Wednesday of March, seventeen hundred and eighty-nine.

But the habitual inattention which marked the conduct of the Delegates, under the Confederacy, who still continued to meet, was manifested on this occasion. Notwithstanding the urgent motives to an early action of the new Government, a House of Representatives was not formed until the first, nor a Senate convened until the sixth of April, two successive circulars having been addressed by eight Senators, earnestly urging the attendance of the residue.

Upon a canvass of the returns from the Electoral Colleges, Washington had sixty-nine votes; Adams thirty-four. Thus, there was a unanimous voice for the first; and less than half the votes for the second officer of the National Government.

After receiving every tribute of public affection and respect, on his route from Mount Vernon; the President arrived at New York, on the twenty-third of April. There, the religious character, which still marks that benevolent

votes, that Adams could not have a majority, and, consequently, could not be President."!!!—John Adams' Works, vi. 543.

† Clinton received *three* of her votes.

and intelligent community, was shown. In the morning of the thirtieth—the day appointed for his inauguration—every Church in the city was to be seen, filled with its congregation, offering prayers for the success of the new Government, and the welfare of its head.

A procession was then formed to attend the President from his residence to the hall of Congress. Standing upon its elevated balcony, in presence of a multitude, increased by inhabitants from the adjacent States, he took the oath of office—administered to him, by the Chancellor of the State of New York.

At this interesting scene, Hamilton was present. He now saw the accomplishment of the arduous efforts of many anxious years—the organization of the Government being completed—by the inauguration of Washington, as PRESIDENT of the REPUBLIC.

Digitized with financial assistance from the
Government of Maharashtra
on 28 September, 2015